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ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 1st February 1954

S.R.O. 689.—Whereas the election of Shri Ridhi Chand Palliwal, as a member of the Legislative Assembly of the State of Rajasthan, from the Hindaun constituency of that Assembly, has been called in question by an Election Petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Rikhab Das S/o Shri Panna Lal Mahajan, Hindaun;

And whereas the Election Tribunal appointed by the Election Commission in pursuance of the provisions of Section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission;

Now, therefore, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

IN THE ELECTION TRIBUNAL, JAIPUR

ELECTION PETITION No. 281 OF 1952.

Rikhab Das, Petitioner.

Versus

Ridhichand Palliwal & 6 others—Respondents.

PRESENT

The Hon'ble Mr. Justice K. K. Sharma, *Chairman.*

Mr. A. N. Kaul, *Member.*

Mr. P. L. Shome, *Member.*

Mr. U. M. Trivedi & Mr. B. P. Agrawal, for the petitioner.

Mr. V. P. Tyagi & Mr. R. C. Jain, for respondent No. 1.

ORDER

Dated 19th December, 1953.

(PER. SHRI SHOME, MEMBER).

In this election petition, the petitioner, Rikhab Das, seeks to set aside the election of respondent No. 1 Ridhichand Palliwal, to the Hindaun Constituency of the Rajasthan Legislative Assembly on the ground that the election had not been free and fair in view of certain corrupt and illegal practices, which have been narrated by the petitioner in paragraph 13 of the election petition.

The constituency is a double member constituency one seat being reserved for a scheduled caste member. The petitioner and the respondent No. 1 contested for the General Constituency. The petitioner stood on behalf of the Jan Sangh

and had Dipak mark as his symbol. The respondent No. 1 stood on behalf of the Congress and his symbol was "a pair of bullocks with a yoke on". The respondent No. 1 was declared elected to the General Seat. Besides the respondent No. 1, six other persons have been made respondents in the petition, of whom the respondent No. 7 Chhanga Chamar, was declared elected to the seat reserved for scheduled castes.

The respondent No. 1 contests this petition, and he has filed a written statement denying all the allegations regarding corrupt and illegal practices named in the election petition, and pleading some further objections in bar to the trial of this election petition, which will be narrated later. Amongst other respondents, respondent No. 5, Gulabchand Palliwal, who is the son of the respondent No. 1, Ridhichand Palliwal, was present all along during the trial. The respondent No. 3 Bhorilal Jaimini also filed a written statement, but he did not take any further steps. The respondent No. 7, Chhanga Chamar, the returned scheduled caste member, also appeared till the framing of the issues in the case, but thereafter did not take any part in the proceedings.

After the written statements were filed, but before the issues were framed, the petitioner presented two applications for amendment of the election petition, by one of which he prayed for the addition of a word, which was omitted by oversight. This being a clerical mistake, and the counsel for the contesting respondent not objecting, the amendment was allowed. By the other application for amendment, the petitioner sought to add another ground under the grounds narrated in paragraph 13 of his election petition, which would have meant the addition of another item of corrupt practice to his allegations. After hearing the parties on this matter, the Tribunal rejected the petitioner's prayer by its order dated 12th January, 1953. The said order is annexed herto, and marked "Annexure A".

Thereafter the parties were examined under Order X, Rule 1, of the Code of Civil Procedure, and issues were framed. The substantial allegations and denials made by the respective parties will appear from the issues themselves, and we do not find it necessary to narrate these allegations over again. The issues framed were:—

- (1) Whether on the 3rd January, 1952 stones were thrown on the petitioner's procession from the office of the respondent No. 1 in Hindaun town in order to disperse it and overawe and terrorise the electorate of Hindaun?
- (2) Whether on 6th January, 1952, at Jagar polling station the presiding officer, Shri Iqbal Bahadur, Assistant Headmaster prevented the voters of the petitioner from voting by telling them that their chance had not come and as a consequence thereof the petitioner lost about 300 votes?
- (3) Whether the petitioner's agent Kalyan Prasad was not allowed to leave the polling booth at Jagar Polling station?
- (4) Whether at Kachroli polling station the presiding officer did not allow the petitioner to enter the polling booth and whether as a result thereof the petitioner lost about 300 votes?
- (5) Whether on the night between the 15th and 16th January, 1952, 3 workers of the petitioner mentioned in the police report dated 15th January 1952 of Wazirpur Police Station were arrested?
- (6) Was section 144 of the Code of Criminal Procedure promulgated in Gangapur town on 19th January, 1952 banning the meeting & processions?
- (7) Whether 16 workers of the petitioner mentioned in paper No. 5 of the list were arrested on 19th January 1952?
- (8) Whether a regular canvassing Office was set up within 100 yards of the booth by the respondent No. 1 at polling station No 588 at Hindaun on the 4th January, 1952 and the Presiding Officer, Shri Hukumsingh did not take any steps to remove it in spite of the objection by the petitioner?
- (9) Whether at Kotri polling Station No. 607 Gomti widow of Charanlal was allowed to vote for Govindi wife of Galinda though her name was not in the voters' list.
- (10) Whether at Piloda polling station on the 10th January 1952, Shri Raj Bahadur the then Deputy Minister in the Central Government freely canvassed for the respondent No. 1 in the polling booth among the voters?

- (11) Whether at Mandawar, in the polling station No. 615 Gangapur the petitioner was not allowed to put his seal on the ballot boxes?
- (12) Whether the then Patwaries of Katkar, Jherara, Shri Mahavirji and Sherpur distributed identity slips on behalf of the respondent No. 1?
- (13) In Master Kastoor Chand a Government employee and whether he distributed identity slips on behalf of respondent No. 1?
- (14) Is Shivkumar Sharma a Government employee and whether he made any speech in favour of respondent No. 1 at the meeting addressed by Shri Tikaram Paliwal within a couple of days before the election?
- (15) Is Ram Sahai Sharma a Government servant and whether he exhorted the voters to vote for the candidate whose symbol was a pair of bullocks with a yoke?
- (16) Whether Fateh Singh S.D.O. Hindaun, Some Nath Sant Naib Tahsildar and the then Patwari of Sherpur were transferred to other places within two months before the election?
- (17) Whether the allegations in the petition covered by issues No. 1 to 16 amount to corrupt practices under the Act and invalidate the election?
- (18) What is the effect of not claiming any relief against the respondent No. 7 Changa who is the second elected candidate from Hindaun Constituency?

At the trial the petitioner examined himself and 25 other witnesses on his behalf, and exhibited a large number of documents. The respondent No. 1, who was the sole contesting respondent in the case, examined 15 witnesses on his behalf, but did not examine himself. The respondent No. 1 also exhibited some documents on his behalf.

Before going into the merits of the case it is necessary to take up an objection raised by the learned counsel for the respondent at the beginning of his arguments. He contended that under section 83(2) of the Representation of the People Act, 1951, (hereinafter to be referred to as the Act) it was compulsory for the petitioner to append a list setting forth full particulars of the corrupt and illegal practices which he alleged including as full as statement as possible as to the names of the parties alleged to have committed such corrupt or illegal practices and the date and place of the commission of each such practice. He submitted that besides the allegations made in paragraph 13 of the election petition, the petitioner did not submit any separate list as required under section 83 (2) of the Act, and, therefore, this election petition could not be proceeded with. Reliance was placed in support of his contention by the learned counsel for the respondent on two decisions of the North Gujarat Election Tribunal in Election Petition No. 83 of 1952. (*Purushotamdas Ranchhoddas Patel Versus Shantilal, Girdharilal Parikh and others*) and in Election Petition No. 77 of 1952 (*Kanaiyalal Durabham Bhansali versus Popatlal Mulshankar Joshi and others*) reported in the *Gazette of India Extraordinary*, Part I, Section I, dated the 10th October, 1952, at page 2261, and the 14th October 1952, at p. 2271, respectively. In each of these cases the objection was taken before evidence was gone into and an issue was raised on the point, which was decided as a preliminary objection as to whether the petitioner could lead evidence in support of the vague allegations made by him. The Tribunal held in both the cases that the petitioners could not do so, and going elaborately into the allegations made in the respective election petitions and in the papers filed subsequently as lists of corrupt and illegal petitions and in the papers filed subsequently as lists of corrupt and illegal corrupt or illegal practices and that the averments actually made were of too vague and general a character as to put the contesting respondent to any notice. The present case before us stands on a different footing. This objection was not taken by the learned counsel for the contesting respondent at the time of the framing of the issues, nor was the objection raised in any of the issues. It is, therefore, in my view too late for the respondent to plead this objection in bar of the election petition at this stage, after evidence has been recorded at length on behalf of both sides. As a matter of fact some of the allegations made in paragraph 13 of the election petition being considered vague and indefinite have not been included in the issues, and the issues have been framed with regard to those allegations made in the election petition about which the particulars were full and complete. It cannot, therefore, be said that the respondent has, in any way, been prejudiced in making his defence, and in any case, after the full hearing of the case, in which so many witnesses have been examined and a large

number of documents have been put in evidence by both sides, this objection, in my view, is not now material and cannot be sustained. I, therefore, overrule this objection, and take up the consideration of the case on the merits.

I take up the issues one by one.

Issue No. 1.—Petitioner's case under this issue is that the polling of votes took place at the Hindaun polling station on the 4th January, 1952, and on the previous day, i.e., the 3rd January on the evening a procession was taken out at Hindaun on behalf of the petitioner. It is alleged that stones were thrown on the procession from the office of the respondent No. 1 in order to disperse it and thereby overawe and terrorise the electorate of Hindaun.

The petitioner (P.W. 2) in his deposition stated that at Hindaun Polling took place on the 4th January, and on the 3rd January at about 6 in the evening he took out a procession at Hindaun. When this procession reached Sarafa, stones were thrown from the office of the respondent No. 1, which was situated in the locality, on the first floor of a building. He did not know exactly whether it was respondent No. 1's personal office or the office of the party, i.e., the Congress, but it used to be called the Congress Office. These stones hit some of the members of the procession, who flew in different directions. He said that it appeared to him that this was done with a view to disperse the procession and to prevent his propaganda. In his cross-examination he stated that at the time stones were thrown on the procession, some persons were visible on the 1st floor of the Congress office, of whom he recognised Ramjilal Jain, Kalyan Prasad, Surajmal and some inmates of the Jain Boarding House, Hindaun, whom he knew by face, but not their names. He said that he had made a report to the police about the pelting of stones on his procession, but that report has not been produced before the Tribunal. He further says that he did not pursue the report further and is not aware of any investigation having been made thereon and the result thereof.

The petitioner examined 5 other witnesses on the point, viz., P.W. 13, Chiranjilal, P.W. 14, Mangilal, P.W. 15, Darola, P.W. 17 Gokul and P.W. 19 Omprakash. These witnesses in the main support the story of the petitioner, though there are some minor discrepancies in the statements of some of the witnesses, which do not appear to be material or detract from the strength of the support they give to the Petitioner's story.

On the respondent's side, the story takes a different shape. The respondent's witnesses on the point are R.1/W.4 Ramjilal and R.1/W.6 Abdur Rahman. Their story is that when the petitioner's procession was passing along the processionists raised slogans against the Congress, and that some of them entered the Congress office and had beaten some of the boys there and damaged certain papers. R.1/W.4 Ramjilal said that he then went to the Congress office with one Madan Mohan and found three boys weeping and some of the papers scattered about. He did not name any of the three boys, nor were any of those boys or the said Madan Mohan examined in the case. This witness further said that when he was going up the Congress Office, he found a Jansangh boy Om Prakash coming down-stairs from the Congress office. One Om Prakash was examined as P.W. 19, and he denied that he or any other people of his side had rushed into the Congress office; it was not put to him in cross-examination that he had entered the Congress office at the time. R.1/W. 4, Ramjilal further stated that leaving the papers in a scattered condition and the boys weeping, he went to the Police Station, and as Secretary of the Hindaun Congress Committee he made a report to the Police. On the report being recorded, the Sub-Inspector of Hindaun Police Station came along with him to the Congress Office and made enquiries. The report made to the police has not been produced before us, nor any evidence given about the result of the alleged inquiry made by the police in respect thereto.

The other witness, R.1/W.6, Abdur Rahman, says that when he was in Congress Office, the procession stopped in front of the Congress Office, and then a number of people came up inside the Congress Office and beat some of the boys. He hid himself, and the other Congress workers went up. He does not mention the names of the boys who were beaten nor of the other Congress workers who were there, but went up. Though he admits that he had been to Hindaun hundreds of times, and that he was a member of the Congress at Gangapur since 1940, he averred that he did not know the names of the Congress people found inside the Congress office at Hindaun at the time of the procession, nor did he know the names of the boys beaten. He further said that on report being made by witness Ramjilal (R.1/W.4) to the police, a Sub-Inspector came, examined the boys, but he says that though he was at the Congress office when the Police came there to inquire, the police did not record his statement.

The taking out of the procession by the petitioner on that day for his propaganda is admitted by the respondent's side. So the question whether there were music, or slogans, or bands or flags and whether they were in the front or in the rear is not of much importance. Witness Chiranjilal (P.W. 13) says that he was hit on the shoulder by a stone. Other witnesses also support the stone-throwing. But there is no clear evidence that these stones were thrown from the office of the respondent No. 1 or the Congress Office. No one could say who threw the stones. All that they said was that the stones came from the direction of the Congress Office, and that some persons including Riddichand were found standing on the roof. Some said that the stones came from the roof in front of the Congress office. The petitioner himself said that in the report that he made to the police, he did not name any particular persons suspected to have thrown the stones. It is, therefore, difficult to fasten the liability on the respondent No. 1, or the Congress Office, though the story set up by the respondent No. 1 in the matter and his non-production of material evidence, which he could have and ought to have produced, raises some suspicion that the petitioner's story might be true; but in the absence of reliable and direct evidence on the point as to who threw the stones, it is difficult to come to a finding that the respondent No. 1 was responsible therefor. It seems likely that both parties are guilty of *suppressio veri* and *suggestio falsi*. It may be that stones were thrown on the petitioner's procession and as a retaliation, his men chased the stone-throwers to the Congress office; but it was for the petitioner to prove his case *viz.*, that stones were thrown on his procession and that the same was done at the instance of the respondent No. 1. The evidence adduced by him falls far short of the required proof. The petitioner, in our view, has failed to discharge the onus resting on him to prove his allegation and the issue is therefore, decided against him.

Issues Nos. 2 and 3.—By issue No. 2 the petitioner wants to suggest that on the 6th of January, 1952, at Jagar Polling Station Shri Iqbal Bahadur, Presiding Officer, prevented the voters of the petitioner from voting by telling them that their chance had not come and as a consequence thereof the petitioner had lost about 300 votes, and further by issue No. 3, that when the petitioner's agent Kalyan Prasad wanted to come out of the polling booth to inquire into the matter, he was not allowed to come out.

On this point the petitioner has made his own statement and examined six other witnesses, *viz.*, P.W. 1, Kalyan Prasad, P.W. 9, Parsadi, P.W. 10, Shri Lal, P.W. 11 Shri Ram, P.W. 12 Bhagwat, and P.W. 25, Kedar Prasad. The petitioner, who is P.W. 2, says that he reached Jagar polling station about 2 minutes after 4 P.M. when he found about 300 or 400 voters of both sexes returning from the polling station. Some of them were standing there also. They complained to him that they were not allowed to vote, and reprimanded him for his bad arrangements, due to which they were not allowed to cast their votes. They told him also that they had been at the polling station since about 2 P.M., and that they could not cast their votes because they were asked by a constable to wait as their turn had not come. He further said that he also met his polling agent Kalyan Prasad who told him that the Presiding Officer, who was also known as the Drawing Master, prevented him from going out, and when he wanted to go out for the second time, the Drawing Master threatened him that he would be driven out by the ear. The petitioner's evidence is that after this complaint he went inside the polling booth and asked the presiding officer why his voters were not allowed to vote. The presiding officer asked him to make any complaint that he had in writing, whereupon he filed a complaint in writing. A copy of the said complaint submitted to the presiding officer, which contains a signed receipt from the said presiding officer, was proved on behalf of the petitioner and is marked Ex. P. 5. The Presiding Officer, Iqbal Bahadur, who was examined as witness No. 8 for the respondent No. 1 and to whose evidence I shall refer later on, admitted the receipt of this complaint. But this complaint proves nothing further than what the petitioner had said, namely, that some of the voters had complained that they had not got the opportunity to vote. P.W. 1 Kalyan Prasad, who was the polling agent of the petitioner at one of the booths at that polling station, said that he heard some noise outside and the people were crying that they were not being allowed to go inside, and that when he wanted to go out the presiding officer stopped him from going out. Shortly afterwards there was again a cry that the people were not allowed to go inside the polling booth. He again wanted to go out but the presiding officer told him that if he persisted he would be driven out and would not be allowed to come in again, and therefore he could not go out. He further said that after the polling was over, the petitioner came inside the polling booth and on his complaining to the petitioner about the matter the latter gave a written complaint to the presiding officer. He also said that when he came out of the polling booth

the people holding Congress slips were allowed to go inside, whereas a constable prevented them from going inside. P.W. 9 Parshadi said that he came to the polling booth to vote, and had a slip with him which bore Dipak mark, that is, the symbol of the petitioner, and that when he reached the polling booth he found that there were two queues of voters, one for those who had slips with Deepak mark and the other for those who had slips of the mark of a pair of bullocks with a yoke on. He further said that he was made to stand in queue of the voters of Dipak mark slips by a constable who said that first the voters of the queue of the slips of the mark of a pair of bullocks with a yoke on would be allowed to vote. He said that there were about 50 persons ahead of him and about 100 to 200 behind. Some of those who were ahead of him could cast their votes, while some could not, and all those behind him could not at all cast their votes. His evidence is that of the voters of the other queue only about two to four could not vote, while all others could vote, because they had precedence. P.W. 10 Shri Lal, P.W. 11 Shri Ram, and P.W. 12 Bhagwat made almost similar allegations. P.W. 25, Kedar Prasad, was the polling agent of the petitioner at the second polling booth of the Jagar polling station. He also said that he heard cries outside to the effect that the voters were not being allowed to come inside the booth, and that he tried to come out twice, but was prevented from doing so by the Presiding Officer. He made a complaint to the presiding officer in writing, which has been marked Ex. p. 33. But this exhibit only shows that he had stated that the agent Mishrilal had gone outside the office and was talking there. There is nothing in this complaint to show that he brought it to the notice of the Presiding Officer that voters were not allowed to enter the polling booth. This is all the evidence on these two issues on behalf of the petitioner.

On the respondent's side only two witnesses have been examined on these two issues, namely, Iqbal Bahadur, the presiding officer of the Jagar Polling Station, R.1/W. 8, and Chand Khan, Head Constable, R.1/W. 12. Their evidence is to the effect that two queues were directed to be arranged for the entry of voters to the polling booth, but these were not on the basis of any symbol of the candidates, but on the basis of groups of villages. The Presiding Officer said that he often came out of the polling booth to see whether the queues were properly arranged or not, and when he came out none complained to him that they were not being allowed to enter and vote. He says that at about 3 P.M. he heard some uproar and on enquiry a constable said that it was due to some of the voters breaking the queue. He further says that at about 3-15 P.M. there was an uproar towards Jan Sangh camp, and some persons armed with lathis proceeded towards the polling station crying "Bachchu Singh ki Jai". They asked some of the voters not to vote and leave the place, whereupon he with the help of the head constable and others brought the situation under control, and the voters who remained on the spot were able to cast their votes. The polling thereafter continued peacefully. He further says that he made a report about this incident in his situation report which has been marked Ex. R.1/3. R.1/W. 12 Chand Khan Head Constable supports the presiding officer Iqbal Bahadur on the point. He also says that the queues were made by groups of villages and not by symbols of the candidates and that except the uproar a little after 3 P.M. in which some persons came out crying "Bachchu Singh ki Jai" and threatened some of the voters, there was no other obstruction to the voters in any way in going inside the polling booth and casting their votes.

Now analysing and comparing the two sets of evidence on the point, it appears that, in the first place, in the complaint made by the petitioner there was no mention of the queues of voters being made on the basis of symbols of rival candidates. If it were so, the alleged complaint to the petitioner by the voters having slips bearing his symbol mark who could not vote would have been mentioned and it would have been stated that all his voters were put in one queue and all of them were prevented from going inside to vote, but that was not the case. Secondly, it would seem preposterous to arrange the voters by the symbol marks of the candidates for whom they had come to vote. This would result in infringing the secrecy of ballot and this would in itself be a serious ground for challenging the election. If the real facts had been like that the petitioner would certainly have made this a ground of his attack in this election petition but he has not done so. Thirdly, this allegation of the petitioner seems to be unreal for another reason, namely, that according to the rules of election under the proviso to clause (2) of Rule 17 of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951, all the voters present within the polling station before the voting is closed are entitled to have their votes recorded. It is clear from the evidence adduced by both the parties on the point that the queues of voters in whichever way they might have been arranged, were within the polling station, and the evidence of the petitioner's witnesses is that some of the voters reached there at about 12 noon, and others at about 2 P.M. If that be

so, there was no reason why their votes could not be recorded even though the voters of the rival candidate had been given the preference to enter the polling booth and vote. The complaint, therefore, seems to me to be unreal. Issue No. 2 therefore fails and as a consequence issue No. 3 would also fail, because it really depend upon the truth or otherwise of the allegation made regarding the obstruction to voters. Further the allegation that Kalyan Prasad was not allowed by the Presiding Officer to come out is made by only Kalyan Prasad himself but he is not supported by any other witness, except petitioner who only heard about it from Kalyan Prasad. It is not possible to rely on Kalyan Prasad's uncorroborated statement, which is denied by the Presiding Officer. I decide these two issues against the petitioner.

Issue No. 4.—This issue raises a question as to whether at the Kachroli Polling Station, the Presiding Officer did not allow the petitioner to enter the polling booth and whether as a result thereof the petitioner lost about 300 votes. This issue is divided into two parts, namely, whether the petitioner was not allowed to enter the polling booth by the Presiding Officer and whether he lost 300 votes in consequence.

With regard to the first portion of the issue, the petitioner P.W. 2 in his deposition stated that the Presiding Officer was Shri Ram Swarup, Head Master of the Government High School at Hindaun, and that the petitioner had been residing at Hindaun for about 15 or 16 years, and he was known to the said Presiding Officer from long before the polling day, and had met him scores of times. He says that he had been to the Kachroli Polling Station on the day of polling, the 6th of January, 1952, and when he went inside the polling booth to see his polling agent, the Presiding Officer asked him how he had got inside. The petitioner told him that he was Rikhab Das, one of the candidates, and that his votes were being recorded there, but the Presiding Officer told him that he did not know him and asked him to get out. The Presiding Officer also asked the Head Constable, who was posted there, to see him out. The petitioner then told the Presiding Officer that he was giving him in writing that he was the candidate and that the Presiding Officer should also give in writing that the petitioner should go out. At that time it was about 11 A.M. or 12 noon. Thereupon the petitioner gave a complaint in writing to the Presiding Officer, which has been marked as Ex. P. 6; it bears an endorsement by the Presiding Officer, and is signed by him in English. This document proves this much that the petitioner complained to the Presiding Officer that the latter was not allowing him to remain in the polling booth, and the petitioner stated therein that he would hold the Presiding Officer responsible for all the loss that he might incur in consequence of the Presiding Officer's action. The last sentence in the document states that the Presiding Officer was also presiding over the polling at the Hindaun Polling Booth on the previous polling day, that is, 4th January, 1952, and he was freely allowed to go in and come out of the said polling booth. The Presiding Officer, Ram Swarup, passed an order on the petition in which he states that it would be good if the petitioner gets something in writing from a high officer to the effect that he is the candidate or he may produce two responsible persons to identify him as such. The petitioner states in his evidence that he thereupon produced two witnesses before the Presiding Officer for identifying him, and when he took these two witnesses he filed a petition before the Presiding Officer, which has been marked as Ex. P. 7, in which he states that he has produced Shri Indarmal and Bhagwat Singh for identifying him, and proper order may be passed. The Presiding Officer thereupon passed an order on the document stating that he did not know any of these two persons, and, therefore, he could not do anything in the matter. The petitioner then states that thereupon he came out of the polling booth, and when he came out, the people told him what could he do in the Legislature when he could not command any recognition at the hands of the Presiding Officer. So being disgusted, he left Kachroli. In his cross-examination the petitioner has further said that Ram Swarup, Presiding Officer, had been at Hindaun for the last 3 years, that prior to the polling day Ram Swarup had met him scores of times at Hindaun, and he was even invited by the said Ram Swarup to become a member of the Managing Committee that was formed on the occasion of the celebration of the Education Week at Hindaun. That was a few months before the polling day. The petitioner is supported in his statement by P.W. 24 Surajmal, who is a lawyer by profession, and was the election agent of Hiralal, a Jan Sangh candidate for the Scheduled Caste seat. He supported the petitioner in material particulars in this matter. He says in his evidence:—

"I had been to Kachroli also on the date polling took place there. When the petitioner Rikhab Das wanted to enter the polling booth at Kachroli the Presiding Officer, Master Ram Swarup, did not allow him to go in, saying that he did not know him. The petitioner said

that he was candidate and was known to the Presiding Officer, who was the Presiding Officer at Hindaun also on the 4th January, 1952, and the petitioner had appeared before him then, and no objection was made at that time. Master Ram Swarup asked the petitioner to produce witnesses before him. The petitioner went with two witnesses but even then the Presiding Officer did not allow the petitioner to enter into the booth. The petitioner said that this action of the Presiding Officer was insulting to the petitioner and it would discourage his voters. The petitioner asked the presiding officer to take a declaration of his that he was the candidate. But the Presiding Officer did not allow the petitioner to do even that. When I saw the attitude of the Presiding Officer towards the petitioner. I also left the place lest I should also be meted out the same treatment."

In his cross-examination he says that when he left the polling station at about 11 A.M. the petitioner was staying behind.

As against this evidence, the respondent No. 1 examined the Presiding Officer Ram Swarup, R. 1/W. 7. This witness admits that he stopped the petitioner from entering the polling booth even in spite of his saying that he was one of the candidates, and called upon him to produce witnesses to say that he was one of the candidates. He admits his endorsement on Exs. P.6 and P. 7, but he says that the last sentence in Ex. P.6, in which the petitioner states that the same Presiding Officer was presiding at the election on the previous polling day, i.e., 4th January, at Hindaun, and he saw the petitioner and allowed him to go inside the polling booth, was not there. This matter was not put to the petitioner in his cross-examination and seems to be an after-thought. In any case there is no doubt that he was also the Presiding Officer at Hindaun on the previous polling day i.e., 4th January 1952 and he does not even say that he did not see the petitioner on that day, which seems unlikely, as in this constituency, polling was taking place at one polling station only on alternate days and the petitioner candidate was likely to be there and if so, it is also likely that the Presiding Officer must have seen him there. No reasons have been given by this witness as to why a candidate coming to a polling booth, though not personally known to the Presiding Officer, should be asked to produce identifiers or certificates from high officer to prove his identity—a procedure which is somewhat extraordinary. There are no provisions for such certificates or identifications in the Act or Rules. It also appears from his evidence that Om Prakash, the polling agent of the petitioner at Kachroli polling station, was present at the time, but the Presiding Officer did not ask the said polling agent anything about the identity of Rikhab Das petitioner, though he knew that Rikhab Dass was the principal and Om Prakash was his agent. He also admits that some time before the last General Election an Education Week was celebrated at Hindaun, and the petitioner was a member of that committee. But he says that in that connection he never came to school before him. This witness has tried to make out a case that the petitioner had disturbed him in his work, and therefore, he did not allow him to enter the polling booth. Learned counsel for the contesting respondent tried to argue that under section 132 of the Representation of the People Act the Presiding Officer had power to remove any person for misconduct. No misconduct, however, was alleged against the petitioner, and nothing was put to the petitioner to that effect in his cross-examination. This case also, therefore, seems to be an afterthought. The petitioner seems to be a well-known person in Hindaun, where the Presiding Officer is employed as Headmaster of the High School. Another teacher of the High School, Shri Iqbal Bahadur was also a presiding officer at another polling station and he has been examined in connection with another affair in this case; he says in his evidence that the petitioner is a prominent man in Hindaun. It is, therefore, difficult to believe that the Presiding Officer should not know the petitioner, and his action in not allowing him to enter and remain in the polling booth appears to us to be improper and illegal. His persistence even after he was told that the incoming person was a candidate and still further even after two identifiers were brought in, to refuse his admittance reveal a state of mind which is not normal or impartial, and ill-befits the position of a person of his status, as Head Master of a High School and as a Presiding Officer at a public election.

He says at the end that the petitioner brought in a second set of identifiers, upon which the petitioner was allowed to stay on and was even magnanimously offered a stool to sit on. This statement of witness is not corroborated by any other evidence on record. The petitioner says that after he was refused to stay on the production of two identifiers, he left the booth in disgust. Considering the conduct and temper of the Presiding Officer as disclosed by his own evidence, it is difficult to rely on this statement of his without any corroboration. In any

case, by two refusals to admit, the mischief had been done, and what the effect thereof would be on the result of the election would be considered under issue No. 17.

Next comes the question as to whether in consequence of this act of the Presiding Officer the petitioner lost about 300 votes. On this point his statement is that when he came out of the polling booth, the people ridiculed him that he could do nothing in the Legislature as he could not command any recognition at the hands of the Presiding Officer. He then says that when he came out, he found voters of both sexes there, who were about 300 in number. He does not say that these 300 voters were the voters who did not vote, but would have voted for him if the said incident had not occurred. In his cross-examination he states that the voters that were assembled outside the Kachroli polling station, when he was not allowed by the Presiding Officer to go in, included persons from Kachroli and Phulwara villages. Votes were cast by these voters, but he did not know for whom they voted. His witness No. 24, Suraj Mal, however, says. About 200 to 300 voters also left the place saying that when the candidates allowed themselves to be treated like that, what could be expected of such candidates in the Assembly? After this episode many of the voters voted for the Congress candidate, under the effect of this incident. In his cross-examination he further says that he had a talk with some of the voters just after they had come out after casting their votes, and they told him that they wanted to vote for the petitioner, but had to cast their votes for the Congress candidate. The 200 to 300 voters who went away from the polling station without casting their votes belong to Kachroli village, and they had Jan Sangh identity slips with them. On the respondent's side there is no evidence on this point.

On this evidence it is difficult to come to any conclusion that 300 or any number of votes had been lost to the petitioner as a consequence of this episode. It may be that he had lost some votes as a result of the insult meted out to him, but how far it has affected the result of the election is quite another matter. Further what was the number of such voters who had not voted for the petitioner or have transferred their votes intended for the petitioner to the congress candidate, as a result of this insult on the petitioner, has not been clearly proved and on the evidence before us, it is difficult to hold without more corroborative evidence that a large number of voters like 200 or 300 had abstained from voting as a result of this incident.

Issue No. 5.—This issue is raised upon the allegations made in paragraph 13 (h) of the election petition, in which the petitioner makes a case that "on the 16th of January, 1952, the police and officers made indiscriminate arrests of some of the petitioner's leading workers at the behest of Shri Tika Ram Pahwal, the then Revenue Minister, who was there at Wazirpur to extend his personal support and to see that the respondent No. 1 came with flying colours and this struck terror among the illiterate voters and thus nearly 600 votes were lost to the petitioner". The issue that was framed was simple, viz., whether on the night between the 15th and 16th January, 1952, 3 workers of the petitioner mentioned in the police report dated 15th January, 1952, of Wazirpur Police Station were arrested. The petitioner in his deposition stated that at Wazirpur the workers of Jan Sangh were arrested on the night between 15th and 16th January. One of them was Rambaxi of Hindaun. There were two others of Wazirpur, but he did not know their names. Their names, so far as he remembered were Bhudha and Harphool. He stated that he was filing a certified copy of the first information report made against Jan Sangh workers at the Wazirpur Police Outpost, but as a matter of fact no such copy has been filed. In his cross examination he said that he stood surety for two or three persons at Wazirpur, whose names he did not know except that of one Ram Baxi, and that he did not know if Bhudha and Harphool Singh were arrested. It appears from his statement in cross-examination that one Kalyan Prasad Sharma made a report about some incident on that day at Wazirpur, and on the basis of that report some arrests were made, and he stood surety for Ram Baxi and two others. Possibly he refers to the report of Kalyan Prasad Sharma, but that report has not been produced. So from his evidence it is not clear who were the persons except Ram Baxi who were arrested and as regards Ram Baxi also nothing appears as to how, why and when he was arrested. Harphool Singh has been examined as P.W. 6, and he says that two persons were arrested namely Bhudha Brahmin and a Koli of Hindaun, that they were arrested at Jan Sangh meeting which was held at Wazirpur on that day at 8 p.m. and the meeting thereafter dispersed. He further says that he himself was arrested the next day that is on the 16th January, 1952, on which day polling was held at Wazirpur at about 9 a.m., and he was released at about 4 p.m. after the polling was over. The only reason that he gives about his arrest is that two members of the Congress party, namely one Mahomedan and Dayanand told him that he should vote for the Congress, but as he said that

he . . . gh, they told him that they would get him arrested. He further said that he was told that he was misleading the voters, and, therefore, he should be arrested. Rambaxi, who is alleged to have been arrested, has been examined as P.W. 16. He said that he was arrested at about 6 p.m. and released at about 3 a.m., when the petitioner Rikhab Das stood surety for him. According to him other persons were also arrested but he did not know their names. He could say only this much that one of them was a Brahmin. In his cross-examination he says, however, that besides himself no other worker of Jan Sangh was arrested in Wazirpur on that day. This is all the evidence adduced by the petitioner in proof of this issue. It is difficult to come to a definite conclusion on this evidence that three workers of the petitioner were arrested on the night between the 15th and 16th January, 1952. The only man named by the petitioner to have been arrested, that is Ram Baxi, says that he was arrested at 8 p.m. on the 15th January, and no other person belonging to the Jan Sangh party was arrested on that day. The petitioner named Harphool as one of the persons arrested, but Harphool says that two persons were arrested at the meeting on the 15th night at 8 p.m., which is contradicted by Ram Baxi, because Ram Baxi himself says that he was arrested at 6 p.m., which was long before the time of the meeting, and he also says that no other persons were arrested on that day. Then Harphool again says that he himself was arrested on the next day, that is on the 16th at 9 a.m., which does not fit in with the petitioner's case in the issue.

The respondent's evidence on the point is that after the Jan Sangh procession had terminated on that day at Wazirpur, a procession on behalf of the Congress started at about 7 p.m. When the congress procession was proceeding, some persons on behalf of the Jan Sangh intervened and asked them not to shout Congress slogans. Thereafter there was some altercation, in the course of which one Dayanand on behalf of the Congress was hit with a lathi, and one Gokul Dhakar of Hindaun also assaulted R.1/W.3 Mohan Lal. A report of this incident was made by Kalyan Prasad and Dayanand to the police whereupon the S.D.O. of Gangapur came and made enquiries. This report has not been produced. It is said that the S.D.O. ordered arrest of the assailant, but the assailant was then untraceable. That order has not also been produced. Thereafter the S.D.O. finding that there was a good deal of tension existing between the rival parties, and there was an apprehension of a breach of the peace, promulgated an order under section 144 Cr. P.C. prohibiting meetings and processions. That order was circulated by beat of drum at about 9 p.m. in the night when a meeting on behalf of the Congress was proceeding, and on receipt of the news about the promulgation of the order Shri Tika Ram Paliwal, who was speaking at the meeting stopped, and the meeting dispersed. In support of this version of the respondent 7 witnesses have been examined, namely, R.1/W.3 Mohanlal, R.1/W.4, Ramjilal, R.1/W.6, Abdul Rahman, R.1/W.10, Dayachand, R.1/W.11, Ripu Haran Singh, Sub-Inspector of Police, R.1/W.14, Mathuralal, and R.1/W.15, Shri Narayan Das Mehta, Sub-Divisional Officer of Gangapur. There are discrepancies and contradictions in the evidence of these witnesses, which make it difficult to accept their version as totally correct. Not a piece of documentary evidence has been produced to show what report the authorities received and no papers have been filed to prove the actual promulgation of any order under section 144 Cr. P. C. Apparently at the time it is said to have been promulgated, a meeting was being held peacefully without the least apprehension of any disturbance. It may be possible that some sort of skirmish was held when the Congress procession was proceeding, but thereafter nothing seemed to have happened. Jan Sangh meeting, thereafter passed off peacefully, and the Congress meeting was also being held peacefully. According to the respondent's case no arrests had been made, but even the petitioner has not been able to prove by convincing and reliable evidence that such arrests had in fact been made, and who were the actual arrested persons.

Even assuming that some workers of the petitioner were arrested, the mere arrest of his workers would not be of any consequence in this election petition unless it is proved that the arrests were illegal and unjustified and were made with an ulterior motive with the connivance of the respondent or his agent, with a view to interfere with the full exercise of any electoral right. The only allegation made by the petitioner in his election petition was that the arrests were made at the instance of Shri Tika Ram Paliwal, but he has produced no evidence whatsoever to connect Shri Tikaram Paliwal with these arrests, if any, nor has he given any evidence as to how the alleged arrests had interfered with the electoral right of any person or affected the result of election. No other illegal or improper motive or prejudicial consequence has been alleged or proved. The onus was heavily on the petitioner to prove his allegation, and the evidence adduced by him on the point has not in any way discharged the onus. I have no other alternative but to hold that the petitioner has failed to prove his allegation on this issue. The situation at Wazirpur on that day will however come in for further consideration later in another connection.

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is as to whether section 144 of the Code of Criminal Procedure was promulgated in Gangapur town on the 19th January, 1952, banning meetings and processions, and issue No. 7 is as to whether 16 workers of the petitioner were arrested on 19th January, 1952. It seems that issue No. 7 as framed was not quite correct, the petitioner's case, as stated in para. 13 (j) of the election petition is that warrant for arrest was issued against 16 of his workers, but actually 7 of them were arrested.

However, on the question of fact, it is now practically admitted on the respondent's side that section 144 of the Code of Criminal Procedure was promulgated in Gangapur on the 19th of January, 1952, prohibiting meetings and processions, and the arrest of 7 workers of the petitioner—not 16—on that day is also now admitted, though in the written statement of the respondent No. 1, both the events were originally denied. What would be the effect of these two events on the election and this election petition will be considered when dealing with issue No. 17, because the circumstances under which the order under section 144 of the Code of Criminal Procedure was promulgated and the arrests of the petitioner's workers were made will have to be considered. The petitioner's case is that this order prohibiting meetings and processions and the arrest of his workers were made with a view to prejudice him in his election propaganda and to terrorise the electorate so that they would refrain from voting for the petitioner. This point would more properly come under issue No. 17, and will be dealt with accordingly.

Issue No. 8.—In this issue the petitioner raises the objection that a regular canvassing office was set up within 100 yards of the polling booth by respondent No. 1, at polling station No. 588 at Hindaun on the 4th January, 1952, and the Presiding Officer, Shri Hukumsingh did not take any steps to remove it in spite of objection by the petitioner.

On this point, the petitioner stated in his deposition,—“The polling station No. 588 at Hindaun was located at a place called Patwar Ghar. There the Presiding Officer was the Customs Inspector, Shri Hukum Singh. The respondent No. 1 set up his canvassing office about 20 steps from this polling station. I objected to this in writing, which I gave to the Presiding Officer. It is Ex. P. 10. This was returned to me with an endorsement by the Presiding Officer that the canvassing office was outside the polling booth. The office remained where it was, and it was not removed.” There was no cross-examination of the petitioner on this point. In Ex. P. 10 it is complained by the petitioner that the Congress Party had set up their office within 100 yards of the polling booth No. 1, and canvassing was being done from there, and he prayed that proper action might be taken. The order of the Returning Officer on the petition shows that he returned the petition stating that the place was outside the polling booth No. 1. The petitioner was supported in his statement on this issue by P.W. 4 Kanhaiyalal, who said that the candidates whose votes had to be cast had set up their offices near the polling booth. The office set up by the Congress Party was at a distance of 20 or 25 paces from the polling booth. The polling booth was near the bungalow where the Patwari realizes revenue. He also said that the petitioner's office was more than 100 yards away from the polling booth. The witness was cross-examined, but his testimony has not been shaken in any way by the Cross-examination. P.W. 17 Gokul also supported the petitioner on this point. He said that the office of the Congress candidate was situated within 100 yards of the polling station at Kacheri and Taluka Bangala. P.D. 19, Om Prakash Arya also stated to the same effect. He said that the office of the Congress candidate was only about ten yards from the Kacheri polling station at Hinduan. Taluka bungalow was about 15 yards from the Congress office. People at Congress office were canvassing for the Congress candidate. There was a Congress flag at the Congress office. There was no cross-examination of this witness on this point.

There was no rebutting evidence produced on behalf of the respondent on this issue. But the learned counsel for the respondent argued at the time of arguments that as the polling officer said that it was outside the polling booth it required no answer, and as a matter of fact even if such canvassing office was set up, it had not materially affected the result. The question of material affect, if any, on the result of the election, will be dealt with under issue No. 17. But the question of fact as to whether a canvassing office was set up as stated by the petitioner, is being dealt with under this issue. The petitioner's evidence on this point is one-sided, and there is no rebutting evidence on behalf of the respondent. There is no reason why the petitioner's evidence on the point should be disbelieved. Ex. P. 10 shows that the polling officer does not deny the setting up of the canvassing office, but he says that it was outside the polling booth, which does not settle the question. It was nobody's case that the canvassing office complained of was set

up within the polling booth, but the complaint was that it was within 100 yards of the polling booth. Under section 130 of the Representation of the People Act, it is provided:

"No person shall on the date or dates on which a poll is taken at any polling station, commit any of the following acts within the polling station or in any public or private place within a distance of one hundred yards of the polling station, namely:—

(a) canvassing for votes; or

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The petitioner has produced evidence to show that an office was set up within 100 yards of the polling booth, which is a smaller area than the polling station. He has also adduced evidence to the effect that canvassing was being done for the respondent No. 1 from that office. The mere fact that the canvassing office is outside the polling booth would not take it out of the prohibited area of 100 yards of the polling station. Further it has been stated by one witness that there was a Congress flag also at the said Congress office, which is also prohibited under clause (e) of section 130. Clearly, therefore, an electoral offence under section 130 of the Representation of the People Act has been committed by the respondent, and the Presiding Officer, Hukum Singh, far from taking any steps to remove it outside the 100 yards area, as it was his duty to do, and to stop the canvassing, connived at it. As to what would be its effect on the result of the election would be discussed under issue No. 17.

Issue No. 9.—Issue No. 9 is whether at Kotri polling station No. 607, Gomti, widow of Charanlal, was allowed to vote for Govindi, wife of Gainda, though her name was not in the voters' list.

The plaintiff's evidence on this point is that of P.W. 22, Sachchidanand, who says that he was the petitioner's polling agent at Kotri polling station. There was a complaint about Gomti wife of Charanlal having been allowed to vote for another woman, who was wife of Gainda Singh. He said that he filed a complaint before the Presiding Officer. This complaint could not be found amongst the election papers sent to the Tribunal from the election office. The witness filed a copy of the said complaint and a receipt by the Presiding Officer, Shri Hukum Singh, about that complaint. Ex. P. 27 is the copy of that complaint, and the receipt signed by the Presiding Officer is Ex. P. 28. The witness says that he also made a complaint about the matter to the Election Officer, Rajasthan, and the Election Commission, Delhi. A copy of the complaint to the Election Officer, Rajasthan, has been marked Ex. P. 29. Mention is made in Ex. P. 29 of the complaint made to the Presiding Officer at the time. The Petitioner tried to produce the woman Gomti, who is stated to have personated another woman Govindi, but the warrant on her could not be executed, as she could not be found, and Govindi is stated to be dead. In the complaint Ex. P. 27 a detailed narration of the event is given. The number of the ballot paper is also stated along with the number of the elector in the electoral roll. But this evidence cannot be said to be sufficient to prove that such an impersonation had been made. Even if it be held that such an impersonation had been committed there is no proof that it was at the instance of the respondent No. 1. The effect thereof, viz., that of a single impersonation in the voting will be of no consequence on the result of the election, as the difference in the votes obtained by the returned candidate and the petitioner is over 1600.

Issue No. 10.—This issue raises the question as to whether at Piloda polling station on the 10th of January, 1952, Shri Raj Bahadur, the then Deputy Minister in the Central Government, freely canvassed for the respondent No. 1 in the polling booth among the voters.

The petitioner (P.W. 8) in his evidence says that he received a complaint from Piloda polling station that Shri Raj Bahadur was urging the voters to vote for the Congress candidate, and was taking them inside the polling booth. This complaint was made to him by his election agent Om Prakash Arya. Om Prakash Arya, P.W. 19, stated that he had been to Piloda on the day of polling, and Shri Raj Bahadur had come to Piloda on that day, and that Shri Raj Bahadur canvassed at that polling station within 100 yards area. His case is that he made a complaint against Shri Raj Bahadur to the Presiding Officer of that polling station. A copy of that complaint with the signature of the Presiding Officer has been marked Ex. P. 19. The original of the petition could not be traced amongst the election papers sent from the election office. In Ex. P. 19, it has been stated that Shri Raj Bahadur canvassed even before the Presiding Officer in the presence of many persons, but no action had been taken against him, and proper action be

taken. Om Prakash further says that Shri Raj Bahadur carried on propaganda for the Congress candidate, and exhorted the voters to vote for the candidates with the symbol of a pair of bullocks with a yoke on. He canvassed support for the Parliamentary candidate as well as the Assembly candidate.

This is all the evidence on the issue on behalf of the petitioner. As against this the respondent's witness No. 1, Manoharlal, who was the Polling Agent of Shri Raj Bahadur, who was contesting the House of People seat in that area, has deposed that Shri Raj Bahadur came to Piloda polling station at about 12 noon, but he did not do any canvassing there, and did not ask anybody to do so. He made a further case that before Shri Raj Bahadur came to the polling station he, namely, the witness, Manoharlal had made a complaint to the Presiding Officer that some Jan Sangh workers including one Vaid of the State Aushdhalaya, were canvassing within 100 yards of the polling booth. This complaint was made in writing, and is Ex. R.1/1. The Presiding Officer apparently did not take any step thereon and therefore he filed a reminder on the matter, which is Ex. R.1/2. When Shri Raj Bahadur came to the polling station the witness informed him about the complaint and the reminder, and thereupon Shri Raj Bahadur went to the Presiding Officer, had a talk with him, and thereafter left the polling station. According to this witness Shri Raj Bahadur was only at the polling station for about three-fourth of an hour. In the course of arguments in this case, much has been made of the fact that Shri Raj Bahadur has not been examined before the Tribunal to deny the alleged canvassing by him. But it appears to me that the evidence on behalf of the petitioner on the issue depends upon the statement of a single witness. The petitioner himself got his knowledge of that incident from that witness. His statement has been contradicted by the statement of the Respondent's witness Manoharlal who was admittedly present at the time of the alleged incident, and was the polling agent of Shri Raj Bahadur, and to my mind the statement of this witness was quite sufficient to rebut the statement of the petitioner's solitary witness Om Prakash, and the fact that Shri Raj Bahadur has not been produced on behalf of the respondent does not in the circumstances of the case lend any strength to the petitioner's case, or raise any adverse presumption against the respondent.

The issue is decided against the petitioner.

Issue No. 11.—This issue relates to the petitioner's complaint that at Mandawar in polling station No. 615 Gangapur he was not allowed to put his seal on the ballot boxes. The petitioner admits in his cross-examination that the ballot boxes at Mandawar polling station were properly sealed before the polling started there. His complaint is only about his agent not being permitted to affix his seal on the ballot boxes after the polling. It is not alleged that there has been any mis-handling with regard to the ballot boxes, after the polling and it does not appear from the Act or the Rules that it was incumbent upon the Presiding Officer to allow the agent of the candidates to seal the boxes after the polling. Rameshwar Prasad, polling agent of the petitioner, made an application Ex. P. 26 before the Presiding Officer saying that he wanted to put the party's seal on the ballot boxes, and therefore he might be allowed to put such seal of his principal. The Presiding Officer made an endorsement on the back of this application that there was no instruction in the Instructions Book about the allowing of the seals of the parties or their agents on the ballot boxes, and that the only instructions were about the allowing of such seals on the packages. He therefore directed the agent to get instructions from the Sub-Divisional Officer Gangapur in the matter so that this order might be carried out. It has not been shown by the petitioner that after this his agent obtained any instructions from the Sub-Divisional Officer and in the absence of any provision in the Act or Rules made thereunder about the allowing of such seals on the ballot boxes it cannot be held that the Presiding Officer infringed any law in refusing to allow the petitioner's agent to put his seal on the ballot boxes. I do not find any force in this issue, and it is decided against the petitioner.

Issue No. 12.—This issue has been framed on the pleading of the petitioner that the then Patwaries of Katkar, Jharera, Shri Mahavirji and Sherpur distributed identity slips on behalf of the respondent No. 1. The evidence about Jharera is that Mohar Singh the then Patwari of that village distributed identity slips bearing the marks of a pair of bullocks with a yoke on (Congress symbol) to the voters. For this the petitioner has examined Bhonria (P.W. 4), Kishorilal (P.W. 5), and Sachchidanand (P.W. 22). Bhonria says that Patwari Mohar Singh distributed identity slips bearing Congress symbol in his village Jharera, and that he said at the time of the distribution of the slips that any voter voting against the Congress would be considered to be an offender against the Raj. He also says that one of the

slips was given to him by Patwari Mohar Singh at about 7 A.M. It is however not clear on what date the slip was given to him, but he says that it was before the polling day that he got the slips from Mohar Singh, and that when the Patwari distributed the slips, Kanhaiyalal Palliwal also accompanied the Patwari. Further he says that he never told anybody about the incident of the slip having been given to him on behalf of the Congress by Patwari Mohar Singh, and that uptill the day of his examination in court he had not given any information of it to the petitioner. Kishorilal (P.W. 5), says that slips were distributed in his village by Mohar Singh a day before the polling day, at about 12 noon, and that one of the slips was given to him also by the Patwari. He also says that when the slip was given to him there was nobody present except his ownself and Mohar Singh. He further says that he did not tell anybody except his brother Damodar about the delivery of identity slips to him by Patwari Mohar Singh. He further adds that he never had any talk with the petitioner in the matter, and that even till the day he was examined he did not inform the petitioner about this affair. Sachchidanand, (P.W. 22), says that he saw Mohar Singh distributing identity slips at Jherera in the evening preceding the polling day when he reached there. It is not explained how what happened with Bhonria and Kesharlal in the matter of the distribution of identity slips by Mohar Singh could come to the knowledge of the petitioner when Bhonria had not furnished information about it to anybody including the petitioner till the very day he was examined. Similarly Kishorilal has also stated that he did not inform anybody except his own brother Damodar about the alleged incident. It has not been shown how this information could reach the petitioner. The record shows that the petitioner was prompt enough to complain about any little incident which came to his knowledge or was suspected by him. It is strange that in such a matter, which is said to be in the knowledge of his agent Sachchidanand, no complaint was made by him or Sachchidanand to any authority before the election took place. The evidence produced on behalf of the petitioner has been controverted by the evidence of Kanhaiyalal and Ramjilal, witnesses Nos. R.1/W.13, and R.1/W.4 respectively, produced by the respondent No. 1. Kanhaiyalal has stated that Mohar Singh never distributed any slip in village Jharera in his presence. This contradicts the statement of Bhonrilal, who says that Kanhaiyalal accompanied Mohar Singh when the identity slip on behalf of the Congress was given to him by Mohar Singh. The evidence of Kanhaiyalal shows that the identity slips on behalf of the Congress candidates, viz; respondent No. 1, Shri Raj Bahadur, and Shri Amritlal in village Jharera were distributed by his ownself, and that the Patwari Mohar Singh was not in the village since 5 or 7 days before the polling day. To my mind in the face of this rebutting evidence on behalf of the respondent No. 1, and the petitioner's evidence being without any further corroboration, direct or circumstantial, it is not sufficient for a definite conclusion that identity slips in village Jharera were distributed by Patwari Mohar Singh on behalf of respondent No. 1.

As regards Katkar, there is the evidence of Krishna Chand (P.W. 20) only who was working for the petitioner. He says that he saw Mishrilal Patwari distributing identity slips of Congress at village Katkar. He does not say that any slips were actually distributed in his presence to any particular person. He states that he passed through the place seeing what was being done there, but did not make any report about it to anybody excepting to the candidate himself. The petitioner does not say that he received the information about the distribution of slips through Krishan Chand, but says that he got the information about the distribution of slips at Katkar by Patwari from Krishna Kumar. It has not been shown that Kishen Kumar and Krishan Chand is one and the same person. No rebutting evidence has been produced on behalf of respondent No. 1, and it would have been proper if Patwari Mishrilal himself had been examined. However looking to the unsatisfactory character of evidence produced by the petitioner himself, I do not think I shall be justified in raising any presumption against the respondent No. 1 for his not examining the Patwari. I am not satisfied from the statement of the solitary witness of the petitioner Krishan Chand that Mishrilal Patwari distributed slips on behalf of respondent No. 1.

As regards Sherpur, the evidence on behalf of the petitioner is only that of Sachchidanand. He says that Kanhaiyalal Patwari distributed identity slips on behalf of congress at Sherpur, but he was not able to name even a single person to whom slips were distributed in his presence. On behalf of the respondent, the evidence of Ramjilal, R.1/W.4 and that of Mishrilal, R.1/W.15 shows that slips were distributed in village sherpur on behalf of Congress by one Mangilal, who is now dead. It may be argued that the fact that Mangilal distributed slips on behalf of the Congress in village Sherpur does not exclude the possibility of distribution of slips by Kanhaiyalal Patwari. The respondent would certainly have done well if he had examined Kanhaiyalal but when the evidence produced on behalf of the petitioner himself is no more than that of his one agent only, and there is no corroboration of it when corroboration was possible, we would not

be justified in drawing an adverse presumption against the respondent simply on account of the fact that he has not examined Kanhaiyalal. To my mind the petitioner has not been able to establish that slips were distributed by Kanhaiyalal at village Sherpur.

Coming lastly to the petitioner's case of distribution of slips at Mahavirji by the local Patwari, there is not a shred of evidence on the record to show that slips were so distributed, except the statement of the petitioner, who said that he got the complaint against the Patwari of Mahavirji from Om Prakash. But Om Prakash, though examined as a witness (P.W. 19) does not say anything about the matter.

The finding on this issue is, therefore, against the petitioner.

Issue No. 13.—The points to be decided in this issue are whether Master Kastoor Chand is a Government employee, and whether he distributed identity slips to the voters on behalf of respondent No. 1. The petitioner in his statement under Order X. Rule, 1, C.P.C. stated that Master Kastoor Chand distributed identity slips of respondent No. 1 in Patonda and Hindaun. He could not give the exact dates on which the identity slips were distributed, but he said that they were distributed within two days before the election. In his examination-in-chief at the hearing he said that he knew Master Kastoor Chand of Hindaun, that he was a teacher of the Government High School in Hindaun, and that he himself saw him distributing the identity slips. In his cross-examination he stated that he had been knowing Kastoor Chand Master since 8 to 10 years, that identity slips were distributed by Kastoor Chand on behalf of the Congress in Mohalla Keshupura of Hindaun and in Patonda village, and that he saw him distributing identity slips in both Hindaun and Patonda. In Patonda Kastoor Chand distributed identity slips on the 5th January at 2 P.M., and in Keshupura on the 1st January. He is supported in his statement by P.W. 8 Jaisi, who says that he saw Master Kastoor Chand distributing slips, that those identity slips were with the mark of a pair of bullocks with a yoke on, that Kastoor Chand was a teacher in Government School Hindaun, and that he was distributing identity slips to carpenters in Mohalla Keshupura, and was saying that votes should be cast in the box with the mark of a pair of bullocks with a yoke on. In his cross-examination he says that the identity slips were distributed by Kastoor Chand at Keshupura a day before the polling took place, and that he himself saw the identity slips being distributed at Keshupura by Kastoor Chand at about 3 P.M. He further states that he saw Kastoor Chand giving an identity slip to one Kishori, and he also saw him giving identity slips to Panna, and Sukha. The houses of Panna, Kishori and Sukha were adjacent. He stated that he had gone to Kishori, who is a carpenter, to get his cart repaired, when the alleged distribution of slips had taken place. Another witness examined by the petitioner on this point is P.W. 14, Mangilal. His statement is that Master Kastoor Chand distributed the slips bearing the mark of a pair of bullocks with a yoke on, that Master Kastoor Chand is a teacher in the Government School, that he resides in the Boarding House, that when Master Kastoor Chand gave him the slip bearing the mark mentioned above, he told the witness that these were the days of the Congress and that the witness should be careful in voting, and that the witness' vote should be cast for the Congress. In cross-examination he stated that Master Kastoor Chand gave him the slip at about 8 or 9 A.M. on the day the votes were cast, and that Master Kastoor Chand had a companion with him, whom he did not know, but he assumed him to be a Government servant, as he was dressed in Khaki uniform, with a chapras around his waist, on which something was written in English. The next witness on the point is P.W. 22, Sachchidanand. He says that he knew Master Kastoor Chand, who was a Girdawar Kanungo at the time of the last General Elections, and prior to that was a teacher in Patwar school. He was a Government servant and he distributed identity slips on behalf of Ridhichand respondent. He did so a day before the votes were cast at Hindaun in Mohalla Keshopura, and while distributing the slips he was asking the voters to vote for the Congress saying that these were the days of Congress rule. In cross-examination he stated that he knew Master Kastoor Chand for about 5 or 6 years, and he saw him distributing identity slips at about 1 P.M., and that they were distributed from house to house. He names five persons viz., Kanchanram, Kishori, Manohri, Jagan and Chiranji Mahajan as some of the persons to whom the slips were distributed by Kastoor Chand. He also says that Master Kastoor Chand had a man or two with him at that time. One other witness, viz., P.W. 23, Hazarilal was also examined by the petitioner on the point, and he said that Master Kastoor Chand distributed the identity slips on behalf of the Congress candidate in Hindaun at Keshopura Mohalla and in Patonda village. He was asking the voters to vote for the Congress saying that these were the days of Congress rule. In cross-examination he says that

when he saw Master Kastoor Chand distributing slips he was passing through Keshopura Mohalla, and he was all alone. But he could not give the date when he saw Master Kastoor Chand distributing identity slips at Patonda, but it was after 5 or 7 days of the day when he saw him distributing such slips at Hindaun. He says that he had been to Patonda to distribute identity slips on behalf of the petitioner, but later on he says that he did not see Master Kastoor Chand distributing slips at Patonda but he saw him with those slips, and that he had read those identity slips, and it was written therein that votes should be cast for the parliamentary seat for Shri Raj Bahadur and for the Assembly seats for Changa and the respondent Ridhi Chand.

As against this evidence, the respondent No. 1 has examined two witnesses, viz., R.1/W.4, Ramji Lal, and R.1/W.9, Shri Kishore. R.1/W.4, Ramjilal, is an editor of a Congress organ *Gramwani*, and was a worker for the respondent No. 1, Ridhichand, during the last General Elections. His evidence is that at Keshopura it was Rewati Prasad, clerk of Shri Lakshmi Narain Vakil, who distributed the identity slips on behalf of the Congress, and that it was wrong to say that Master Kastoor Chand distributed identity slips on behalf of the Congress in that Mohalla. He admits that he knew Master Kastoor Chand of the Government High School. The other witness R.1/W. 9, Shri Kishore also says that slips were distributed in Keshopura Mohalla by Rewati Prasad on behalf of the Congress and Ramjilal Jain (presumably R.1/W. 4) was with him at that time. Rewati Prasad gave him a slip at his house, but he did not remember if there was any symbol on that slip. In his cross-examination he admitted that it was at the instance of Rewati Prasad that he was brought to depose, and that he was putting up with Rewati Prasad, and that he was asked by Rewati Prasad to state the name of the person who had given him the slip. The day of distribution of slips, according to him, was a day or two before the polling.

On this it would appear that there is very little evidence about the distribution of identity slips by Kastoor Chand in village Patonda. It was only the petitioner who said that he had seen Master Kastoor Chand distributing identity slips at Patonda, and the only other witness is Hazarilal, P.W. 23, who said in his examination-in-chief that he saw Kastoor Chand distributing identity slips at Patonda. But in his cross-examination he said that he only saw Kastoor Chand with some identity slips and from that it would seem that he assumed that he was distributing the slips. So the distribution of identity slips by Kastoor Chand in Patonda village is not supported by sufficient and reliable evidence. It is also strange that the petitioner, who had known Master Kastoor Chand of Government High School for a period of 8 or 10 years before the last General Elections, failed to mention his name in the election petition among those Government employees against whom he complained that they had worked on behalf of the Congress. The name of Master Kastoor Chand was mentioned by the petitioner only in his statement under Order X, Rule 1, which was recorded on the 22nd of January, 1953, whereas the petition was made on the 16th of May, 1952. This too is a very strong circumstance against Master Kastoor Chand having taken any part in canvassing on behalf of the Congress.

As regards the distribution of identity slips in Mohalla Keshopura of Hindaun too I am not satisfied on the evidence on record that Master Kastoor Chand distributed any slips on behalf of respondent No. 1. As has been mentioned in connection with Patonda, his name was not mentioned in the election petition, although the petitioner had known him for 8 or 10 years before the last General Elections. Moreover, the evidence, which has been produced by the petitioner on this point, is not clear and is conflicting. The petitioner clearly stated in his statement at the trial that Master Kastoor Chand was a teacher in Government High School, Hindaun. His witness, Jaisi, P.W. 8, also stated that Kastoor Chand was a teacher in Government High School, Hindaun. His another witness, Mangi Lal, P.W. 14, also stated that Master Kastoor Chand was a teacher in the Government School. He even went further and deposed that he resided in the Boarding House. Shri Sachchidanand, however, who was produced by the petitioner as his witness No. 22, and who said that he knew Master Kastoor Chand, stated that that Kastoor Chand who distributed identity slips on behalf of respondent No. 1 was a Girdawar Kanungo, and that before he was appointed Girdawar Kanungo, he was a teacher in Patwar School. This witness had worked for the petitioner during the last General Elections. It has not been proved that Master Kastoor Chand Girdwar Kanungo is the same person as Master Kastoor Chand of the Government High School, Hindaun. The evidence of the petitioner, therefore, is not consistent or clear as to whether it was Master Kastoor Chand of Government High School or Master Kastoor Chand, who appears first to have been a teacher in Patwar School, and was at the time of elections Girdawar Kanungo, who distributed the slips in Keshopura Mohalla. On behalf of the respondent, Ramjilal has been examined as R.1/W. 4.

He has sworn that he knew Master Kastoor Chand who was a teacher in Government School. He has also sworn that it was wrong to say that Master Kastoor Chand distributed any slips in Keshopura Mohalla on behalf of the Congress. This Ramjilal had worked for the respondent Ridhichand during the last General Elections, and was the Secretary of the Hindaun Congress Committee at that time. He has said that it was one Rewati Prasad who had distributed identity slips in Keshopura Mohalla on behalf of the Congress. In this he is supported by R.1/W. 9 Shri Kishore, who is a carpenter, and lives in Mohalla Keshopura. He has said that during the last General Elections slips on behalf of the Congress candidate were distributed in Mohalla Keshopura by Rewati Prasad. None of these two witnesses has at all been shaken in cross-examination on this point. There is also some discrepancy about date and time when the slips are said to have been distributed by Master Kastoor Chand in Mohalla Keshopura. The petitioner himself says that slips were distributed in Mohalla Keshopura by Master Kastoor Chand on the 1st January, 1952. P.W. 8, Jaisi, also says that identity slips were distributed by Kastoor Chand at about 3 P.M. a day before the polling took place. Mangi Lal P.W. 14, however, says that Master Kastoor Chand gave him a slip on behalf of the Congress at about 8 or 9 A.M. when the votes were cast. Shri Sachchidanand, P.W. 22, also says that Master Kastoor Chand distributed slips a day before the votes were cast at Hindaun. Hazari Lal, P.W. 23, also says that he saw the identity slips which Master Kastoor Chand was carrying at that time, and it was written therein that votes should be cast for parliamentary seat for Shri Raj Bahadur and for Assembly seat for Changa and the respondent Ridhichand. Mangi Lal, P.W. 14, however, says that he had read the slip, and it was written there that votes should be cast for the Congress and there was also a mark of a pair of bullocks with a yoke on. He does not say that the names of the candidates were printed there. These two discrepancies mentioned above might alone have not been sufficient to disbelieve the evidence of the petitioner's witnesses, but read with the reasons given in the earlier part of the judgment on this issue, they create doubt in the veracity of the petitioner's evidence regarding the distribution of slips by Master Kastoor Chand on behalf of the Congress. This issue cannot, therefore, be decided in favour of the petitioner and is decided in favour of the contesting respondent.

Issue No. 14.—This issue relates to one Shiv Kumar, a Government servant, who is alleged to have made a speech in favour of respondent No. 1, at a meeting addressed by Shri Tikaram Paliwal about two days before the election.

The petitioner in his examination under Order X, Rule 1, C.P.C. stated that Shiv Kumar Sharma made a speech in favour of respondent No. 1 along with Shri Tikaram Paliwal, and the speech was made by Shiv Kumar in Hindaun town a day or two before the election. In his examination-in-chief the petitioner stated that he knew Shiv Kumar Sharma, who was a teacher, and was a Government servant, and that he made a speech in favour of the Congress candidate at the meeting addressed by Shri Tikaram Paliwal, which was held about two days before the date of polling. There was no cross-examination of the petitioner on the point. Three other witnesses have been examined by the petitioner on this point, viz., P.W. 17, Gokul, P.W. 20, Krishan Chandra, and P.W. 24, Surajmal. It is not disputed that Shiv Kumar is a Government employee, as it is admitted by R.1/W. 4 Ramji Lal that he is a teacher in a Government school.

Regarding his participation in the alleged meeting on behalf of the Congress, P.W. 17, Gokul says that Shiv Kumar addressed the meeting and said that he could foretell that Congress would win in the election. In his cross-examination he said that the meeting which was addressed by Shri Tikaram Paliwal was held on the roof in front of Murlidharji's temple and he heard the speeches from the Bazar below. He further said that there was loud-speaker used at the meeting, and that he could also see the speaker from the place where he was. He also said that Shiv Kumar did not make any speech, and he simply said first that he could forecast that Congress would win and then he sang a song. So far as he remembered, the song had something to do with Pt. Jawahar Lal Nehru. The next witness, P.W. 20, Krishan Chand, also stated that on the 1st or 2nd January a meeting was held at Hindaun on behalf of the Congress party, and Shiv Kumar recited certain poems and made a speech there. The poems and the speech were in favour of the Congress candidate. Shiv Kumar said in his speech that he was an astrologer and could say that Congress was sure to win. Shri Tika Ram Paliwal also came to that meeting in the course of Shiv Kumar's speech. Shiv Kumar also exhorted the people to raise pro-Congress slogans. In his cross-examination he said that he saw Shiv Kumar speaking, and that the meeting was held on the roof of Murlidharji in Mandi. There were loud-speakers at the

meeting, and Gokul, Vice President of Jan Sangh, was also sitting there. The other witness, P.W. 24, Surajmal, is a Vakil, and was an election agent of Shri Hiralal, who was a Jan Sangh candidate for the scheduled caste reserved seat. He said that he knew Master Shiv Kumar, who addressed a meeting organised by the Congress two or three days before the 4th of January, 1952, the day on which polling took place at Hindaun. In his cross-examination he said that he saw the meeting being addressed by Shiv Kumar while passing through the place where it was being held, but he did not stop there. He further said that the only thing that he heard Shiv Kumar saying at the meeting was that votes should be cast in favour of the Congress as Jan Sangh party was like a frog, and the Congress was the oldest party. The meeting had been taking place for some time before he passed that place.

As against this, the respondent No. 1 examined only R.1/W.4, Ramjilal, who stated that Shiv Kumar did not address any Congress meeting in connection with the election. On these statements as they stand, I find that Shiv Kumar recited some poem in favour of the Congress, at one of the meetings convened on behalf of the Congress at Hindaun, and that he made some sort of forecast that Congress, which was the oldest party, would win, and the Jan Sangh party would not. I am not satisfied that Shiv Kumar took any further part in the meeting than the one just mentioned. I do not believe the version given by the respondent that Shiv Kumar did not participate in the meeting held by the Congress at Hindaun, which was also addressed, among others, by Shri Tika Ram Paliwal. There is no denial that no meeting was ever held in Hindaun during the last General Elections, which was addressed by Shri Tika Ram Paliwal. Shri Tika Ram Paliwal has not been produced to prove that Shiv Kumar did not take any part in the meeting which was addressed by him at Hindaun.

The fact that Shri Suraj Mal, P.W. 24, who was an election agent of another Jan Sangh candidate, raised an objection on the 4th of January, 1952, before the Presiding Officer of Polling Booth No. 591/1 that Shiv Kumar had spoken on the Congress platform against the Jan Sangh, that he was a partisan, and that he should not be allowed to work as Polling Officer, and Shiv Kumar, though present, did not take any objection to this complaint of Shri Suraj Mal, also goes to show that the complaint of the petitioner in this respect is not altogether without substance, or that it was only raised as an afterthought. Shiv Kumar too has not been produced to deny that he has not taken any part in the meeting held at Hindaun and addressed by Shri Tika Ram Paliwal. His name has also been mentioned in the petition.

My finding, therefore, is that Shiv Kumar did take part in a meeting organised by the Congress and addressed by Shri Tika Ram Paliwal at Hindaun in connection with the General Elections, inasmuch as he recited a poem in favour of the Congress and made a forecast in favour of the Congress.

Issue No. 15.—This issue relates to one Ram Sahai Sharma, who is alleged to be a Government servant and it is stated that he exhorted voters to vote for the Congress candidate. Two witnesses have been examined by the petitioner to prove his case. P.W. 19, Om Prakash Arya, who was the election agent of the petitioner, said that he had been to Bernala polling station and there he saw Ram Sahai of Gangapur, who is a railway servant, carrying on propaganda for the Congress candidate. Rameshwar Prasad polling agent of the petitioner at that polling station made a complaint to the Presiding Officer about this and this complaint was made in his presence. He further says that he had also been to Morpa and he found Ram Sahai also there. There also Ram Sahai was canvassing support for the Congress candidate. A complaint was made at Morpa also and the Presiding Officer assured him that action would be taken against Ram Sahai. The Presiding Officer gave him a writing in this connection, which is exhibit P. 22. This exhibit is a letter or notice issued by the Presiding Officer of Morpa polling station on the 18th January, 1952, informing the said Om Prakash and Rameshwar Prasad that their complaints regarding Ram Sahai had been forwarded to the Sub-Divisional Officer of Gangapur for necessary action. It appears from this exhibit P. 22 that Rameshwar Prasad and Om Prakash had on the 14th and 18th January, 1952, made complaints against Ram Sahai to the effect that he was a railway employee and was working with the party of Ridhichand, the contesting respondent. The other witness, P.W. 20, Rameshwar Prasad, said that he had been to Morpa, and had filed a complaint that Ram Sahai who was a railway employee was canvassing for the Congress candidate. He further said that he had been to Bernala also and there also he made a complaint to the Presiding Officer against the workers of the Congress. None of these original complaints have been produced, but it appears from Ex. P. 22 that the two complaints as alleged were in fact made on the 14th and

18th January, 1952. The originals could not be traced amongst the sealed packets sent from the Election Office, presumably because, as stated in Ex. P. 22, these had been forwarded to the Sub-Divisional Officer for necessary action. This witness produced two other documents Exs. P. 24 and P. 25, which were applications made by him to the Presiding Officer of the Morpa polling station on the 18th January, 1952. These have no connection with Ram Sahai or his actions, but these documents prove conclusively that Rameshwar Prasad was present at Morpa on that day. One of the documents, Ex. P. 25, refers to an incident at the polling station, when a son came to vote for his father, as the latter was ill. The document calls attention of the Presiding Officer to this fact, and he in his remarks at the back of the petition says that on the name of the son being ascertained, the matter was referred to the S. D. M. Gangapur. This fact is mentioned because an attempt, though feeble, was made on the side of the respondent to prove that this witness Rameshwar Prasad was not at Morpa on that day.

The respondent No. 1 has examined two witnesses on the point, R.1/W.2, Gulab Chand, and R.1/W. 5, Bhonrilal. R.1/W. 2, Gulabchand said that polling took place at Barnala on the 14th January, and at Morpa on the 18th January, and that he was present at both the places. He states that he knew Ram Sahai of Gangapur and saw him at Barnala Polling Station. His case is that Ram Sahai did not work with their party in the elections and as an excuse for Ram Sahai being there at the time, he said that Ram Sahai was under the treatment of a Vaid who was in their party at Barnala, and Ram Sahai had gone there to consult that Vaid. In his cross-examination he admitted that he saw Ram Sahai at Barnala when he was brought before the Presiding Officer on the allegation that he was working on behalf of the Congress. This lends support to the case of the petitioner that Ram Sahai was working for the Congress and complaint was immediately made about that by the petitioner's men. The Vaid mentioned by R.1/W.2, Gulab Chand, is Bhonrilal, R.1/W.5. He is a resident of Gangapur and worked at the Dharmarth Aushadhalaya of Gangapur. He also says that Ram Sahai did not work for the Congress and that Ram Sahai had consulted him there and took medicine from him. Ram Sahai is a man of Gangapur, the witness is also a Vaid carrying on his profession at Gangapur. If Ram Sahai required his advice and medicine, he could have got them from him at Gangapur and need not have run after him upto Barnala. It is not suggested that Ram Sahai was in such a desperate state of health that it was necessary for him to go to Barnala to consult the Vaid and get medicine from him there. On the other hand, he was found moving from place to place—Barnala and Morpa,—which indicates that he was in good health and in no immediate need of medical attention. The excuse given by the respondent's witnesses is not acceptable. On the other hand, the absurdity and evident falsity of the excuse tend to support the petitioner's case that Ram Sahai was there at Barnala and Morpa for doing some work, which it is in the interest of the respondent to suppress. It was put to witness Bhonrilal as to whether Ram Sahai was working outside the polling booth in connection with the elections and he replied that he could not say, as he was working at the polling booth as polling agent of Riddhichand. When again he was asked as to whether Ram Sahai was brought by Jan Sangh workers before the Presiding Officer with a complaint that he was working for the Congress outside, he said that in his presence it was not done and tried to give a varnish of truth to his statement by adding that he did not remain sitting inside the polling booth all the time, but sometimes he went outside the booth. The testimony of this witness is, therefore, not worthy of credence. Respondent's evidence has not in any way shaken the value of the oral and documentary evidence produced by the petitioner, which go to prove that Ram Sahai had been canvassing on behalf of the Congress candidates and that complaint to that effect was made at the time by the petitioner's agents.

From the oral and documentary evidence discussed above, it is proved that he was at Barnala and Morpa for the purpose of canvassing support for Congress in the Elections. The question, however, is whether it has been proved by the evidence on the record that he was in the employment of the railway at the time he was seen canvassing. For this there is no evidence except the vague statements of Om Prakash P.W. 19 and Rameshwar Prasad, P.W. 21. When asked in cross-examination Om Prakash stated that he did not know what post Ram Sahai held; nor did he know whether he was working on daily wages. Rameshwar Prasad, P.W. 21, also stated that he did not know what post Ram Sahai held. The petitioner himself, who verified clause (q) of para 13 of the petition, which relates to Ram Sahai, from his personal knowledge and belief, did not state, when examined before the Tribunal as his own witness, that Ram Sahai was holding any post under the railway at the time he was seen canvassing. It is true that Ram Sahai has not been examined and the witnesses for the respondent have not stated that Ram Sahai was not a railway employee.

But there is no admission in the respondent's evidence that Ram Sahai was in the employ of the railway at the time of the last General Election. On the other hand, the respondent's evidence is that Ram Sahai was not a pucca employee and that he was called whenever there was any work for him to do. It was, therefore, for the petitioner to prove that Ram Sahai was in the employment of the railway at the relevant time when he is said to have been canvassing for the Congress, but the petitioner has failed to do so. Under the circumstances, it was no duty of the respondent to prove that at the time of the last General Elections Ram Sahai was not in the employment of the railway. The conclusion, therefore, is that Ram Sahai did some canvassing work for the Congress in the election, but it is not proved that he was under Government employ at the relevant time. This issue is, therefore decided against the petitioner and in favour of the contesting respondent.

Issue No. 16.—This issue has been abandoned by the petitioner's counsel at the time of arguments, and, therefore, it need not be gone into.

Issue No. 17.—Issues Nos. 1 to 16 are issues of facts on the allegations made by the petitioner regarding the alleged corrupt or illegal practices. Issue No. 17 relates to the legal consequences thereof, i.e. whether the allegations made in the other issues, so far as they are proved to be true, constitute corrupt practices under the Act and, therefore, invalidate the election. Issue No. 16 has been abandoned by the learned counsel for the petitioner, and as a result of the findings on the issues Nos. 1 to 15, the following allegations of the petitioner covered by issues Nos. 4, 6, 7, 8, and 14 have been found to be true and it is now necessary to consider the legal effects thereof.

A. Issue No. 4.—The Presiding Officer, Shri Ram Swarup, at the Kachroli Polling Station, did not allow the petitioner to enter the polling booth.

It is contended that the action of the Presiding Officer contravenes the provisions of Rule 17 of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951, and as such is covered by the provisions of section 100 (2) (c) of the Act, being a non-compliance with the provisions of a rule (i.e. Rule 17) made under the Act relating to the election. That rule provides that the presiding officer shall regulate the number of electors to be admitted at any one time inside the polling station or a polling booth and shall exclude therefrom all other persons, except, among others, each candidate, and by clause (e) thereof identification is contemplated only in case of voters. So evidently the Presiding Officer by refusing to admit the petitioner in the polling booth committed a breach of the rule which amount to a non-compliance of the rule under section 100 (2) (c) of the Act. But in that case it has got to be proved that the result of the election has been materially affected by the said non-compliance of the rules, viz., the prevention of the entry of the candidate to the polling booth. The petitioner's case is that this action of the Presiding Officer in deliberately insulting him had its repercussions amongst the voters outside, who ridiculed him that he could do nothing in the legislature as he could not command any recognition from a Presiding Officer, and that thereby he lost about 300 votes. No other consequence on the result of the election is either alleged or proved. On the finding on this branch of the issue it has been held that the petitioner has failed to prove that 200 or 300 votes had been lost to him, as a result of this incident. The only effect, material or otherwise, on the result of the election, alleged by the petitioner has not been substantiated. So, in my view, the election is not liable to be set aside on this ground.

B. Issue No. 8.—That a regular canvassing office was set up within 100 yards of the booth by the respondent No. 1 at polling station No. 588 at Hindaun on the 4th January, 1952, canvassing for the respondent was being carried on from there, and that the Presiding Officer, Shri Hukum Singh did not take any steps in spite of objection by the petitioner.

This contravenes the provisions of section 130 of the Act, the provisions of which section make the person responsible for such contravention punishable with fine, which may extend to Rs. 250. This is an electoral offence, but is not a corrupt or illegal practice under any of the provisions of sections 123, 124 or 125 of the Act. An electoral offence does not by itself invalidate the election. But if it be held to be a breach or non-compliance of the provisions of the Act, i.e., of section 130 of the Act, then it will have to be proved that it has affected the result of the election materially. The Returning Officer, Hukum Singh, to whom a complaint was made gave an evasive reply but did not take any steps to remove the canvassing office. Thereby he might be guilty of a dereliction of duty, but it is not alleged by the petitioner that the Presiding Officer refrained from taking any steps as prayed for by him with a view to further the prospects of the rival candidate. It is reasonable to presume that some consequences might have ensued from the said breach or non-compliance, but under the law, the

consequence must be proved to be of such a magnitude, as to have effected the result of the election materially. Petitioner has not at all shown how the result of the election has been affected by the above infringement of the law. It is, therefore, not possible to hold that the result of the election has been materially affected thereby.

The learned counsel for the petitioner, however, argued that it was not necessary for him to shew that the result of the election has been materially affected and that once it is established that there has been an infringement of or non-compliance of any provisions of law relating to the elections, the onus would be shifted on the respondent to shew that the result of the election has not been materially affected thereby. In support of his contention, he relies on a decision of the Calcutta High Court reported in 24 Calcutta Weekly Notes at page 189 (Shyam Chand Basak Vs. The Chairman of Dacca Municipality and another), where it was held by their Lordships Hon'ble Mr. Justice Ashutosh Mookerjee and Hon'ble Mr. Justice Panton that an election is not necessarily void because a rule has been infringed. "The Court will uphold the election, if it is satisfied that the result has not been affected by the infringement which actually took place. The burden rests upon the defendants to establish this as they maintain the validity of the election notwithstanding the infraction of the rule." Their Lordships were of the view that to hold otherwise would be to encourage a violation of rules and they thought it important to emphasise the aspect that rules were made to be obeyed and that violation of the rules may imperil the election, throwing a heavy burden on those who, notwithstanding the breach of the rules, wish to support the election and to satisfy the Court that the purpose of the election has in fact been achieved. The case related to a Municipal election which was held in July, 1918, and the decision was made in August, 1919. The case was governed by the Bengal Municipal Act, 1884, but it appears from the report that the said Act did not contain any provision regarding the effect of infringement of a statutory rule. Therefore, their Lordships based their decision on reports of English cases, which were based mainly on English common law. In the present case, under the Act there is a clear provision on the point viz., section 100, clause (2) sub-clause (c) of the Act, wherein it is provided that if the result of the election is materially affected by, amongst others, any non-compliance with the provisions of the Constitution or of the Act or of any Rules or orders made under the Act or of any other Act or rules relating to the election....., then the Tribunal shall declare the election of the returned candidate to be void. When there is express provision in the Act, governing the election, regarding this matter, it is not necessary or open to the Tribunal to go beyond the Indian law and refer to English law. It is clear from this section that the mere non-compliance with the provisions of the Act would not by itself avoid the election. It must be shown that the result of the election has been materially affected by such non-compliance and the onus would be on the petitioner to prove so.

Our attention was drawn by the learned counsel for the petitioner to a decision of the West Bengal Election Tribunal (in which the above mentioned decision in 24 C.W.N. 189 was relied upon), reported in the *Gazette of India Extraordinary, Part II, Section 3*, dated the 26th May 1953, at p. 1717 (Niharendu Dutt Mazumdar versus Sudhir Chandra Bhandari and others—Election Petition No. 172 of 1952). In this case the learned Tribunal held that there was no election at all in one of the polling centres and about 800 voters—mainly women were deprived of their rights of franchise. The difference in the votes polled by the petitioner and the successful candidate was only 163. So the Tribunal held that the very nature of the non-compliance with the provisions of the law raised a presumption that the result of the election had been materially affected and that the evidence adduced strengthened such presumption. The Tribunal therefore was of the opinion that the onus lay heavily on the respondent No. 1 to rebut the presumption and to establish satisfactorily that the result of the election has not been materially affected, and in support thereof, the Tribunal referred to the decision in 24 C.W.N. 189. The fact that the Calcutta Weekly Notes case was based upon English decision, because there were no relevant provisions in the Bengal Municipal Act, which governed the case, whereas in the present case, there is definite provision in the Representation of the People Act 1951, regarding the effects and consequences of non-compliance with the provisions of law, was not brought to the notice of, and was not gone into, by the Tribunal. What the Tribunal however held was that non-compliance with provisions of law might in appropriate cases from the very nature of the non-compliance raise a presumption that the result of the election has been materially affected and in such cases the onus will be shifted on the person, who wants to maintain the election to prove that the result of the election has not been materially affected. The non-compliance complained of in the present case does not itself raise any such presumption, as in the West Bengal Tribunal case. So this case does not help the petitioner in any way.

Reliance was placed by the learned counsel for the respondent on the decision of the Bombay Election Tribunal in the case of Prahlad Kishan Atre *versus* Dr. T. R. Naravne and others (Election Petition No. 57 of 1952), reported in the *Gazette of India Extraordinary, Part I, Section 1*, dated 31st October, 1952, at page 2359. This case has lately been followed in another case by the same Tribunal being Election Petition No. 76 of 1952,—Moinuddin Burhanuddin Harris *versus* Bhavani Shankar Padamanath Divgi and others, reported in the said *Gazette*, dated 27th January, 1953, at page 211. The decisions in the above cases support the above view and the Tribunal observed in the latter case at page 215 of the report as follows:—

“Under the Indian law if a petitioner has to bring his case within the provisions of section 100 (2) (c), mere proof of non-compliance with even the mandatory provisions of the Constitution or of the Representation of the People Act is not enough, even though such non-compliance or gross irregularity may possibly have affected the result of the election. The provisions of section 100 (2) (c) require the petitioner to prove that the result has been materially affected by such non-compliance or irregularity.”

In the present case there is no evidence that the alleged non-compliance of the provisions of the Act has materially affected the result of the election, and as a matter of fact, the petitioner does not even plead in his election petition that such adverse and prejudicial effect has ensued. All that he says in para 13 of the petition is that the election has not been free and fair because of certain grounds, of which the above infringement of section 130 of the Act is one. The infringement as stated above is, however, not a corrupt practice and under section 100, clause (1) (a) and (b), an election can only be declared void as being not a free election, if it is proved that the corrupt practice of bribery or of undue influence extensively prevailed or coercion or intimidation has been exercised by one particular community, group or section on another community, group or section. This particular ground complained of by the petitioner can only come under section 100 (2) (c) as stated above, but as it has not been proved that the result has been materially affected thereby, it cannot be held that the election is liable to be set aside on this ground.

C. Issue No. 14.—Participation of Shiv Kumar, a Government servant, in the election propaganda meeting of respondent No. 1.

It has been argued on behalf of the petitioner that the act of Shiv Kumar comes under clause (8) of section 123 of the Act, inasmuch as it amounted to obtaining or procuring by respondent No. 1 assistance for the furtherance of the prospects of his election from a person serving under the Government of the State. It was further argued that even if it did not amount to obtaining or procuring assistance by the candidate himself or his agent, it at least amounted to the obtaining or procuring of assistance by other persons with the connivance of respondent No. 1. On behalf of respondent No. 1 it was argued that there was neither any allegation, nor any proof that assistance, if any, was taken from Shiv Kumar either by the candidate himself or his agent, or by some other person with the connivance of respondent No. 1 or any of his agents.

On a careful consideration of the record, I find that there is no allegation whatsoever in the petition that Shiv Kumar took part in the Congress meeting at the instance of respondent No. 1 or any of his agents, or at the instance of any other person with his connivance or that of any of his agents. We have been asked simply to raise a presumption that because the meeting, in which Shiv Kumar Sharma participated, was a Congress meeting and was addressed by a Congress leader and Minister, Shri Tika Ram Paliwal, the respondent No. 1 should at least be taken to have connived in his participation. But there is nothing in the evidence to show even that respondent No. 1 was present at the said meeting. No presumption, as suggested on behalf of the petitioner, can, therefore, be raised. It is a fundamental principle of interpretation of statutes that no words used in it are considered to be surplusage, and that every word and expression should be taken into consideration. The Act makes the assistance for the furtherance of the prospects of a candidate's election from a Government servant penal only if the assistance is obtained or procured by a candidate or his agent, or by any other person with the connivance of a candidate or his agent. One of these necessary ingredients has, therefore, to be proved before it is found that the assistance from a Government servant came within the definition of major corrupt practice, as envisaged by clause (8) of section 123 of the Act. No evidence whatsoever has been produced to show that assistance was obtained or procured by respondent No. 1 or his agent, nor has it been proved that assistance was taken by any other

person with the connivance of respondent No. 1 or any of his agents. A person cannot be said to have connived at a certain act unless he has a knowledge of it. In this case it has not been proved that respondent No. 1 or any of his agents had any knowledge of Shiv Kumar Sharma's intended participation in the meeting or that any of these persons was present when Shiv Kumar Sharma recited the poetry or made the forecast. It cannot, therefore, be said that under section 123 (8) of the Act, respondent No. 1 was guilty of a major corrupt practice. We have been referred to the following decisions of three different Tribunals given under the Act:—

1. Decision of the Assam Election Tribunal in the case of Abdul Rauf *vs.* Makhtar Ali and others (Election Petition No. 87 of 1952), reported in *Gazette of India, Extraordinary, Part II, Section 3*, dated the 5th January, 1953, page 7.
2. Decision of the Election Tribunal, Patiala, in the case of Lahri Singh *vs.* Attar Singh and others (Election Petition No. 214 of 1952), reported in *Gazette of India Extraordinary, Part II, Section 3*, dated 5th February, 1953, at page 315.
3. Decision of the Election Tribunal, Patiala, in the case of Ghasi Ram *vs.* Ram Singh (Election Petition No. 100 of 1952), reported in the *Gazette of India, Extraordinary, Part II, Section 3*, dated the 21st February, 1953, at page 475.

In the first case, a Government officer was said to have signed his name in an election manifesto on behalf of a candidate. It was not denied that the election manifesto was issued by the successful candidate, but it was sought to be proved that the person involved was another person, and not a Government servant; but that plea failed, and the learned Tribunal held it a major corrupt practice under section 123 (8) of the Act.

In the second case, a Government servant was employed as a polling agent by the successful candidate, and it was clearly a case of procuring or obtaining the assistance of a Government servant by a candidate himself.

In the third case also a Government servant was employed as a polling agent. That case too is altogether distinguishable from the present case.

It may be mentioned that there were three Congress candidates in this Constituency, out of whom one, Shri Raj Bahadur, was a candidate for Parliamentary seat, and the other two, Radhi Chand respondent No. 1 and Chhanga respondent No. 7, were candidates for the Rajasthan Legislative Assembly seat. The Constituency for the purpose of Rajasthan Legislative Assembly was a double-member constituency—Chhanga standing for the reserved seat for the Scheduled Caste and respondent No. 1 for the General seat. Even if it be permissible to presume, in a case where only one candidate of a particular party is standing for election, that every speaker, who addressed the meeting convened by the party, or otherwise took part in it, did so with the connivance of the candidate, it is difficult to make any such presumption in a case like the present where three Congress candidates were standing for three different seats. It may be that only one of the three candidates or two of them might be responsible for the meeting, and the third candidate might have no hand in it, and may not even know who were the likely speakers or participants in other ways in that meeting. Under the circumstances of the case I am not able to hold that the respondent No. 1 either procured or obtained the assistance of Shiv Kumar or any of his agents or some other person with the connivance of respondent No. 1 or his agent procured or obtained Shiv Kumar's assistance.

D. Issue Nos. 6 and 7.—Promulgation of order under section 144 Cr. P.C. in Gangapur town on the 19th January 1952, banning meetings and processions, and arrest of workers of the petitioner at Gangapur on the said date.

The petitioner's case on these issues, is that the order under section 144 Cr. P.C. was promulgated in order to prevent him from taking out a procession and holding a public meeting for which he had already arranged and made announcements and the work of his propaganda machinery was thus stopped. His further case was that warrants of arrest were issued against 16 of his leading workers at the instance of Shri Tika Ram Paliwal who was pulling the wires from the Dak Bungalow and seven of them were arrested without any cause and some of them were handcuffed and paraded in the city and were kept in Police lock-up till next mid-day and that all this was done with a view to terrorise the electorate and discourage them from voting for the petitioner.

In reply to the above the respondent No. 1 has in his written statement simply stated that the allegations made in paras. 13 (i) and 13 (j) are not admitted, from which it may be presumed that he denied the incidents altogether and also denied the implications thereof. He had no positive case to make on the matter in his written statement, but later on, it was admitted on his behalf that the order u/s 144 was promulgated and that 7 persons—workers of the petitioner were arrested and a positive case on his behalf developed as the trial proceeded.

It may be stated at the outset that the promulgation of the order under section 144 Cr. P.C. and the arrests of the workers of the petitioner do not by themselves constitute any ground for setting aside the election. These are not directly covered by any of the grounds mentioned in section 100 of the Act, nor do they, by themselves, constitute any corrupt or illegal practice under sections 123, 124 and 125 of the Act. The contention of the learned counsel for the petitioner however is that these executive actions were taken with a view to hamper him in his election and terrorise the electors so as not to vote for him and that the local executive were dominated and guided by the Revenue Minister, Shri Tika Ram Paliwal, who being himself a Congress leader and Congress Minister, was manipulating in favour of the Congress candidate. As such, in his submission, these were acts calculated to assist the respondent No. 1 for the furtherance of the prospects of his election, and thus came within the mischief of clause (8) of section 123 of the Act and further that by indirectly interfering with the free exercise of their right of franchise by the voters through these acts of intimidation, these acts constituted undue influence. Therefore these acts were major corrupt practices and the election was not a free and fair election. There cannot be a corrupt practice without a corrupt motive and the acts complained of can only be acts of intimidation, if they were done with the purpose alleged. So it has to be seen whether these acts, *viz.*, the promulgation of the 2nd order under section 144 Cr. P.C. and the arrests were made without reasonable and probable cause and with a corrupt motive. The question also involves the right of the candidates and the electoral public to organise meetings and processions in connection with elections, which if the election is to be a free and fair election, should not be lightly interfered with. It is necessary therefore to consider carefully the circumstances under which the said order under section 144 Cr. P.C. prohibiting meetings and processions came to be passed and the workers of the petitioners were arrested.

It would appear from the provisions of the Act that the legislature has made definite provisions regarding election meetings. Section 126 of the Act provides that no person shall convene, hold or attend any public meeting within any constituency on the date or dates on which a poll is taken for an election in that constituency. But whereas public meetings are barred and prohibited on the day of the poll, the legislature is very jealous about the freedom to hold election meetings prior thereto, as will appear from section 127 clause (1) of the Act which provides that any person, who at a public meeting to which this section applies, acts or incites others to act, in a disorderly manner for the purpose of preventing the transaction of the business for which the meeting was convened shall be punishable with a fine which may extend to Rs. 250. By clause (2) of the section an election meeting has been defined as and the section has been made applicable to, any public meeting of a political character held in any constituency between the date of the issue of a notification under the Act calling upon the constituency to elect a member or members and the date on which such election is held. It will thus be seen that the right to hold public meetings in connection with elections up to the day previous to the day of poll is unfettered and unrestricted, and in order to protect and safeguard such right, by clause (3) of the section, it has been provided further that if any police officer reasonably suspects any person of committing an offence under sub-section (1), he may, *if requested to do so by the Chairman of the meeting* require that person to declare to him immediately his name and address and if that person refuses or fails so to declare his name and address or if the police officer reasonably suspects him of giving a false name or address, the police officer may arrest him without warrant. It is clear therefore that the legislature did not intend that the police officers should have anything to do with an election meeting and that though disturbances at election meetings have been made punishable as an offence, legislature has taken care in placing the initiative in the matter of taking steps against persons creating such disturbances, not on the police, but on the Chairman of the meeting. The legislature evidently recognised the fact that election meetings, as they are all over the world, can often be a little boisterous, and the option of taking any action against any disturbance or boisterousness at such meetings is laid on the Chairman of the meeting and not on any agent of the Government. The police can only, if so requested by the Chairman of the meeting ask the person creating disturbance to disclose his name and address evidently with a view to his eventual prosecution under clause (1) of section 127. If he gives his name and address, the police can do nothing further. The police can only arrest him without warrant, if he refuses to disclose his name and address or the police

officer reasonably suspects that he was giving a false name and address. The power of the Police therefore in connection with election meetings is thus extremely limited and circumscribed. The reason, evidently is that in a democratic system of Government, officers serving under a Government by the ruling party should not embroil themselves in such meetings at the time of the election and lay themselves and the Government open to any charge or slightest suspicion of partisanship. The petitioner's complaint is that what the legislature wanted to prevent has exactly been done by the S.D.O. and Police of Gangapur, at the instance of Shri Tika Ram Paliwal, a Congress leader, the then Revenue Minister of the Rajasthan Government, which was a Congress Government in order to assist the respondent No. 1, a Congress candidate, in his election.

This brings us to another aspect of the question as to whether the provisions of section 127 of the Act govern or abrogate the powers of the Magistrate or the Police under the ordinary law regarding the maintenance of law and order. It may be mentioned that section 127 or any other provision of the Act does not mention anything about the processions led by candidates or by parties to an election. The provision in the Act is only with regard to election meetings. So the regulation of processions would be governed by the ordinary law, unhampered by any provision of the Act. Meetings and processions in the present case were prohibited by an order under section 144 Cr. P.C., passed by the Respondent's, witness No. 15 Shri Narain Das Mehta, then Sub-Divisional Magistrate of Gangapur, on the application of R.1/W.11, Ripu Haran Singh, Sub-Inspector of Police, incharge of Gangapur Police Station. Warrants of arrests were also issued by the said Magistrate on the application of the said Sub-Inspector of Police. The order u/s 144 affected both the parties to the election, but the respondent does not seem to have taken any serious objection and as will be seen hereafter, was, for all intents and purposes, a consenting party thereto. The respondent in his written statement simply stated that the allegations of the petitioner were not admitted, without further stating his version of the affair, but ultimately he had to admit the facts and gave evidence to justify the order and the arrests and his story, as stated before developed as the trial proceeded.

The petitioner examined himself and 4 other witnesses on his behalf on this point (P.W. 7, Nathuni Lal P.W. 17, Gokul, P.W. 18, Damodar Prasad and P.W. 19, Om Prakash Arya). Of them, P.W. 17 Gokul and P.W. 18 Damodar Prasad were amongst those who were arrested. The story that has emerged from their evidence is that on the 19th January 1952 announcement was made in the morning that a procession would be taken out on behalf of the petitioner at 5 P.M. and thereafter a meeting will be held in the evening, that, thereafter an order under section 144 Cr. P.C. was passed prohibiting carrying of arms and offensive weapons, that about midday between 12 and 1 P.M. Shri Tika Ram Paliwal came to Gangapur and proceeded to the Rest House or Dak Bungalow. Thereafter another order under section 144 Cr. P.C. was passed prohibiting meetings and processions from 4 P.M. to 12 midnight. Thereupon the intended procession and meeting were abandoned and the workers of the petitioner were sitting at the Jan Sangh Office. About 3 to 3-30 P.M. the Police came to the Jan Sangh Office and took seven of the workers to the Police Station. Gokul (P.W. 17), who was one of the arrested persons, said in his deposition in examination-in-chief—"While I was there (Jan Sangh Office), Police came at about 3 or 3-30 p.m. and arrested myself, Chandanlal, Om Prakash shopkeeper, Damodarlal, Ram Sahai, Ratansingh and one other whose name I do not remember. We were taken to the Police Station and put behind bars. We asked why we were arrested but the Police told us we would be told afterwards..... We remained behind the bars throughout the night. We were not given any food nor were given any cover for the night". In cross-examination he further said as follows:—"A Police constable came to Jan Sangh Office at Gangapur and called me and when I went down I found the Sub-Inspector there, whose name was Ripu Haran Singh. The Sub-Inspector did not tell me that I was being arrested for any trouble at Dak Bungalow. Even when I asked him why I was being arrested he did not tell me the reason and told me that he would let me know at the Police Station. At the Police Station also even when I asked the Sub-Inspector the reason of my having been taken there, he did not tell me what was the reason. He simply put me behind the bars. At the Police Station also I made the inquiry from Ripu Haran Singh". P.W. 18, Damodar Prasad, who was also one of the arrested persons, said as follows:—"At the time of my arrest I asked the Sub-Inspector whether he had any warrant for my arrest, but he told me that he himself was a warrant. Thereupon I told him that I would not go without a warrant but he threatened me that I would be taken by force. We were not told what was the reason for our arrest although we repeatedly asked at Police Station. The petitioner approached the Police but we were not bailed out on that day. We were kept in the Police lock-up throughout the night and were neither served with meals nor were we given anything to cover ourselves with. Treatment

meted out to us was not good". He is a student of the Law College and his insistence about warrant and reasons for arrest seem to be likely and true. This witness was not cross-examined on this point. In fact, there is no denial of these statements (*viz.*, those regarding non-disclosure of reasons for arrest, the treatment in the Police lock-up and absence of warrant in the evidence of Ripu Haran Singh, Sub-Inspector of Police (R.1/W.11), or of Narain Das Mehta S.D.O. (R.1/W.15), or of any other witness for the respondent. It was further proved from the petitioners' evidence that one Chiranjilal, another worker of the petitioner, was arrested on the next morning i.e. on the 20th January the day of polling and was taken in handcuffs from the Police Station to the Court. This also has not been challenged in cross-examination, nor denied by any of the above mentioned two official or other witnesses for the respondent. After the arrests on the 19th January, the petitioner filed two applications, to the S.D.O. Narain Das Mehta (R.1/W.15), on that day. In one Ex. P. 1 (which is the original application and a certified copy of which also has been marked Ex. P. 8), the petitioner prayed for relaxation of the order u/s 144 Cr. P.C. prohibiting meetings and processions and stated that he had arranged for a procession in the evening and everything was ready therefore, but the S.D.O. has at the instance of Shri Tika Ram Paliwal, Revenue Minister, promulgated an order u/s 144 Cr. P.C. prohibiting processions and meetings. He has a legal right to carry on propaganda and his legal right should not be interfered with. Up-to-date similar meetings and processions have been held at every place without any interference. So the illegal order u/s 144 should be cancelled. It was also stated in the application that the petitioner had just come to know that some of his workers had been arrested without any cause which has resulted in great panic in the town. So he prayed that just and proper order might be passed. In the other application, Ex. P. 23, the petitioner stated that seven of his workers had been arrested at 3 p.m. and that even the Police being asked several times as to for what offence and under whose orders they have been arrested, the Police have not disclosed the reasons. That those seven persons were his principal workers for the election and tomorrow being the polling day at Gangapur, in their absence he will be in great difficulty. He further stated that this action has been taken at the instance of his rival party with the motive of putting obstructions to voting on his behalf. Therefore he prayed that the said seven persons be released and that if there be any charge against them they should be informed about the charges and bonds for their attendance may be taken. This application was filed by the petitioner's election agent, Om Prakash Arya who is also a lawyer. The first of the two applications was verbally rejected and as regards the second, the petitioner was told that the matter would be taken up the next day. The next day the arrested persons were taken to Court at about 9 A.M., when the Magistrate, who also lived in the same place came, but soon thereafter he left for the Dak Bungalow and returned after about an hour and a half and again went out and returned at about 12 or 12-30 p.m. and then passed orders for bail. In the meantime polling had begun from 9 A.M. in the morning. Ultimately the arrested persons were released on bail, between 1 to 2 p.m. A case under section 107 Cr. P.C. was started against them; they filed replies denying any offence, attended Court on several dates, but no evidence was produced and the case was ultimately dismissed. Petitioner was present all along in Court trying for their release, after which they went out and found their workers and voters scared away and some of them whom they approached said that they feared that they would be arrested if they supported the Jan Sangh.

As against this the respondent in his evidence tried to prove, *in the first instance*, that on the 19th January in the morning an announcement was made on his behalf also that a procession would be taken out at 5 p.m. and a meeting would be held thereafter. Amongst the names of the speakers, the names of Shri Tika Ram Paliwal and Shri Raj Bahadur were said to have been mentioned. The petitioner denied any such announcement on behalf of the respondent, and said that no other party except himself had made any announcement for a procession or meeting that day. This, however, was not put to any of the other witnesses for the petitioner. It seems to me that it is difficult to accept the story of the respondent for several reasons, namely,

1. There is discrepancy in the respondent's evidence as to the time of the alleged announcement of the procession and meeting. Whereas R.1/W.2 Gulab Chand, R.1/W.3, Mohanlal and R.1/W.6 Abdur Rahman said that the announcement was made after first proclamation under section 144 of the Code of Criminal Procedure, banning carrying of arms, R.1/W.14 Mathura Lal says that the announcement was made before that proclamation. The evidence of R.1/W.11 Ripu Haran Singh, Sub-Inspector of Police, also tends to show that the said proclamation under section 144 Cr. P.C. was made after the two announcements of processions and meetings by the two parties had been made. R.1/W.15, Shri Narain Das Mehta, Sub-Divisional Officer, however, says that this matter came

up before him two or three days before the polling day, which is nobody's case and about which no other evidence was adduced.

2. The petitioner protested against the order banning processions and meetings, as will appear from his application Ex. P.1 (same as Ex. P. 8) mentioned above but no serious efforts seem to have been made by the respondent, and he seems to have been a consenting party to the ban. R.1/W.2 Gulab Chand said that "we tried with the authorities that the meetings and processions be allowed", but who those "we" were he had not explained. In his cross-examination he said, however, "I did not go to Nizamati with an application for allowing Congress meeting to be held on the 19th January". R.1/W.6 Abdur Rahman, who was said to be a prominent worker of the Congress and for respondent No. 1, and who was at all important places—Hindaun, Vazirpur, and Gangapur—said, "I do not know if any application was made on behalf of the Congress to be allowed to hold a meeting, but they tried to obtain permission. I did not go to Nizamati, and, therefore, I do not know if anybody on behalf of Congress had applied verbally for permission to hold meeting and take out procession on behalf of Congress." He also did not explain who those "they" were. Sub-Inspector Ripu Haran Singh, R.1/W.11 does not say that any such attempt was made by the respondent for the relaxation of the ban on meetings or processions. He would have known if such an attempt had been made, because it appears from Ex. P. 1 (that is the application of the petitioner for relaxation of the said order to the S.D.O.) that on getting the said application the S.D.O. referred the matter to Ripu Haran Singh for report, and if the respondent had made any such application it must also have been referred to him. R.1/W.14 Mathuralal said, "Thereafter at about 5 p.m. a proclamation was made on behalf of the Government that section 144 Cr. P.C. had been promulgated, and processions and meetings had been prohibited. On this I along with a Bengali worker, whose name I do not remember at present, went to the local Magistrate, and requested him to lift the ban on meetings, but he declined." That Mathura Lal was not speaking the truth would appear from the fact that he says that the proclamation was made at 5 p.m., whereas a matter of fact the proclamation was made effective from 4 p.m. to 12 midnight on that day. Therefore, it must have been promulgated very much long before 5 p.m. R.1/W.15 Shri Narain Das Mehta, S.D.O. also does not say that Mathura Lal went to him for this purpose, but he says that on behalf of the Congress Party one Mr. Banerjee came to him and further that Ridhi Chand respondent also called on him that day, but not in connection with this proclamation. The said Mr. Banerjee has not been examined, nor any other evidence produced to show that any serious attempt was made by the respondent's side to get a cancellation of the said proclamation. The respondent saw the S.D.O., but he did not mention this matter. Except this discrepant oral testimony of the said witnesses, there is no documentary evidence as in the case of the petitioner to prove that any attempt was made to get the order cancelled, and it would appear that to all intents and purposes the respondent was a consenting party to it. Even if any attempt had been made it was a mere eye-wash.

3. It would appear from the evidence of R.1/W.6, Abdur Rahman that he went to the Congress Office at about 2 p.m., and there he busied himself in the preparation for the Congress procession, and that till then there was no prohibition against taking out processions. He says that "at about 6 p.m. when we were about to take out procession, we came to know that taking out of processions and holding of meetings were banned". Even according to the respondent's case, his procession was to be taken out at 5 p.m. The order under section 144 Cr. P.C. became effective from 4 p.m. and the people in the Congress Office must have known of it soon thereafter, if not earlier. If they had made any attempt to get a relaxation of that order, as they attempted to prove, then it was all the more reason that they would have known it before 5 p.m. No other witness had made any statement supporting Abdur Rahman to the effect that the preparation for the Congress procession proceeded upto 6 p.m., when they became first aware of the ban. So this is another circumstance which lends suspicion to the view that there was any announcement for a Congress procession at all.

These variations in the story set up by the respondent and the discrepancies between different witnesses for the respondent show that they were not speaking the truth, and perhaps the story itself being in course of development by gradual stages till it took a final shape in the evidence of the last witness for the respondent R.1/W.15, Shri Narain Das Mehta, was merely a got up one. The two official witnesses in this case, viz., the Sub-Inspector of Police and the Sub-Divisional Officer, cannot be taken to be entirely disinterested and independent witnesses, because it is mainly the *bona fides* of their actions that are in question, and unless there is strong corroboration by independent reliable evidence, their testimony cannot be given that amount of respect and credence that their position would otherwise deserve. Unfortunately as will be more apparent hereafter the

statements of the other witnesses examined by the respondent do not agree with the statements of these two official witnesses, and further these two witnesses themselves also do not agree in their statements with regard to several important and material particulars.

Secondly, the respondent tried to prove that after the arrival of Shri Tika Ram Paliwal at Gangapur, and while he was staying at the Rest House, it was surrounded by Jan Sangh workers, who raised slogans, which led to the second order under section 144 Cr. P.C., prohibiting meetings and processions.

The petitioner's case and evidence as stated above were that in between the promulgation of the two orders under section 144 Cr. P.C. nothing happened, which could affect law and order, and that the promulgation of the order prohibiting meetings and processions and the arrests of his workers were made with a view to intimidate the voters so that they may not vote for him. The question, therefore, now is whether the said event really happened as alleged by the respondent, and if so, whether the same justified the actions taken by the Police and the Sub-Divisional Magistrate. Regarding the incident, all that is alleged is that the Dak Bungalow was surrounded by some people who raised some slogans. None of the respondent's witnesses, even including the Sub-Inspector, Ripu Haran Singh, says that except raising slogans "the Jan Sangh workers" did any illegal act or mischief. It is only in the evidence of the last witness, viz., Shri Narain Das Mehta, S.D.O., that we find that a report was made to him that Shri Paliwal was abused and threatened that he would be killed by the opposite party. He stated that he went to see Shri Paliwal at the Rest House that day at about 2 P.M. but he did not make any report to him about any incident at the Rest House at that time. Respondent's witness, Gulab Chand, R.1/W.2, said that at about 1 P.M. he passed the Dak Bungalow (which is the same as the Rest House), on his way to the Telephone Exchange, and at that time he saw the Dak Bungalow surrounded 200 to 250 Jan Sangh workers who were raising slogans. Except this incident no witnesses say that there was any other incident regarding Shri Tika Ram Paliwal. So if the incident happened at about 1 P.M. it is somewhat striking and strange that Shri Paliwal would not say anything to the S.D.O., Shri Narain Das Mehta, when he saw him at 2 P.M., because he was the person, whose duty and business it was to see that no lawlessness occurred. The petitioner's case was that the S.D.O. went to the Dak Bungalow off and on, and it was at the instance of Shri Paliwal that all these acts which he complains of took place. Shri Narain Das Mehta admits in his deposition that he went to the Dak Bungalow twice or thrice that day. What passed between them then is a matter which other people outside are not expected to know. Shri Narain Das Mehta did not say anything as to what happened, whether he had any talk with Shri Paliwal at all, if not why he went there, what he did there, and if he did see Shri Paliwal, and had any talk with him, what was the talk about. At one stage in his cross-examination he said that he apprised the Hon'ble Minister of the situation. So that there must have been some talk between the S.D.O. and the Minister about these matters, but the S.D.O. Shri Narain Das Mehta does not say anything about it. The petitioner from the very beginning—even in his application for relaxation of the prohibition order on the 19th January (Ex. P.1) had been complaining that these orders and arrests had been made at the instance of Shri Paliwal to terrorise his workers and voters, and, therefore, it was all the more necessary that Shri Narain Das Mehta should have disclosed and said clearly what passed between him and Shri Paliwal when they met at the Dak Bungalow. This was due as much to himself and to Shri Paliwal as to the Government of which they both were parts. This not having been done a suspicion naturally arises that he has suppressed something which if disclosed would not go in his favour or in favour of the party examining him.

Regarding this incident itself the evidence is conflicting and discrepant. R.1/W.2 Gulab Chand stated that the Dak Bungalow was surrounded by 200 to 250 persons who raised slogans. R.1/W.14 Mathura Lal says that there were about 50 persons and R.1/W.11 S. I. Ripu Haran Singh says that there might be 20 or 25 persons. That does not seem to be a formidable number in view of the fact that the Dak Bungalow was being guarded by four constables with fire arms. The armed police guard, it may be stated, was provided not for any apprehension of attack, but in the usual course of events and practice, as the Hon'ble Minister visited the place, not in his private capacity, but as Revenue Minister. So far as the oral evidence on behalf of the respondent goes, excepting the last witness, S.D.O. Shri Narain Das Mehta, R.1/W.15, no one made any mention of any abuse or threat to kill anybody. The only allegation was about raising of slogans and surrounding the Dak Bungalow. The slogans, as mentioned by R.1/W.2, Gulab Chand, were "Congress Murdabad", "Shri Paliwal ka Nash Ho", "Jan Sangh Zindabad", "Bachchu Singh ki Jai Ho", to which R.1/W.11, Ripu Haran Singh and R.1/W.14

Mathura Lal added another, namely, "Congress ki Kya pahichan, Luchcha, Gunda, Bayiman". These slogans, though some of them are objectionable from the point of view of decency, are not at all threatening and do not show that any threat to kill anybody was made or intended. So from the allegations of this incident alone, even if held to be correct and true, one cannot say that there was such an apprehension of a breach of the peace that an undoubted right of the people at the time of election which was so clearly and strongly safeguarded by the provisions of section 127 of the Act should be so lightly interfered with, and I do not think that this incident by itself provided any sufficient cause for the promulgation of the said order.

Thirdly, in the progressive evolution of the respondent's case an attempt was made to bring in an allegation of another incident, namely, the stoning of the car of Shri Raj Bahadur at Gangapur that day. The story was introduced in the evidence evidently to provide a further excuse for the police actions taken. R.1/W.2 Gulab Chand who was one of the main workers of the respondent, and his first witness on the Gangapur affair did not say anything about the stoning of Raj Bahadur's car, though he deposed about the details of other happenings there. R.1/W.3, Mohan Lal said that at about 5 p.m. he saw Raj Bahadur's car near the police station, and it was being pelted with stones, but later R.1/W.14 Mathura Lal said that Raj Bahadur's car was stoned at 3-30 p.m. and that the second proclamation under section 144 Cr. P.C. was issued at 5 p.m. R.1/W.11, Ripu Haran Singh, Sub-Inspector of Police, near whose police station the car was alleged to have been stoned, did not mention anything about this incident at all either in his deposition or in any of his reports on the basis of which the two orders under section 144 Cr. P.C. were passed, and the arrests were made. Reference will be made to the said reports hereafter. It seems, therefore, that this incident was introduced for the first time in order to support a story that was to take a final shape in the evidence of the last witness, Shri Narain Das Mehta, R.1/W.15.

In his deposition Shri Narain Das Mehta mentions this incident as one of the reasons for the order under section 144 Cr. P.C. prohibiting meetings and processions. But he did not make any mention of it in the situation report (Ex. R.1/5), which he said he had submitted on the 20th January, 1952, to the Collector and District Magistrate and to the Commissioner, regarding the situation at Gangapur on the 19th January. Therein he gave other reasons and circumstances which led him to pass the order under section 144, but not the stoning of Shri Raj Bahadur's car. Further, he in his deposition says that—"Shri Raj Bahadur wired to me and also told me verbally that stones had been thrown at his car." The incident happened, if at all, near the police station of the town of Gangapur, where Shri Narain Das was S.D.O., according to whom Raj Bahadur saw him soon after the incident. So, what occasion, reason or possibility there could be for Shri Raj Bahadur sending a wire to Shri Narain Das Mehta—i.e. from Gangapur to Gangapur, it is difficult to understand. In his cross-examination he said that Shri Raj Bahadur made a complaint to him in writing. But that complaint has not been produced. The alleged wire has also not been proved. On the other hand, the petitioner has proved two telegrams (Exs. P.11 and P.12), from which it appears that complaints were made at the time to the Election Commission about Shri Tikaram Paliwal's interference, arrests of his workers and prohibition of meetings etc.

Even assuming that the alleged incident, i.e., the stoning of Shri Raj Bahadur's car, had happened, it could not have been a ground for the promulgation of the order under section 144 Cr. P.C., because that order had been passed, before this alleged incident, at about 2 p.m., according to the evidence on behalf of the petitioner and also according to the evidence of respondent's witness No. 2, Gulab Chand. Subsequent witnesses have made discrepant statements as regards the time of the proclamation as also of the alleged stoning. So no reliance can be placed on their testimony. The two official witnesses—Sub-Inspector of Police and S.D.O.—have remained discreetly silent about the timings of either altogether.

Fourthly, according to the said two official witnesses the orders under section 144 Cr. P.C. and the arrests were made on the report of the S. I. Ripu Haran Singh who said that Shri Tikaram Paliwal arrived at Gangapur some time in the forenoon of the 19th and stayed at the Dak Bungalow. Some people opposed to Congress went to the Dak Bungalow at the time. They might be about 20 or 25 in number. During his investigation he found that cries of "Paliwal Murdabad" and "Congress ki kya Pahichan, Luchcha, Gunda, Bayiman" were raised by that party at the Dak Bungalow where Shri Tikaram Paliwal was staying. A report was lodged about it at Gangapur Police Station. On that report he made an investigation, and the case was registered under section 447 I.P.C. On investigation in that case it was felt that simply the banning of carrying of arms in public was not sufficient, so he made a report to the Sub-Divisional Magistrate

that meetings and processions should be entirely banned and on that the proclamation banning meetings and processions was made under section 144 Cr. P.C. The report dated 19th January 1952, mentioned by the witness, which was submitted to the S.D.M., is Ex. P.4, and it narrates that many people belonging to Congress, Jan Sangh and Ram Rajya Parishad had come from outside to Gangapur, and that on that day in the morning some persons who appeared to belong to Jan Sangh Party went to the Rest House, and abused Shri Tikaram Paliwal, Ridhi Chand and Chaturbhuj, and threatened to assault them, who have also reported to the police station. He, therefore, prayed that an order might be passed under section 144 Cr. P.C. prohibiting meetings and processions up to 12 midnight on that day. This report shows that in the first instance the allegation of abuse and threat to assault had been made, but it does not agree with the oral evidence, which does not mention any threat to assault or kill. The report which is alleged to have been made by Shri Tikaram Paliwal, Ridhi Chand and Chaturbhuj to the police station has not been produced. Neither have any papers in connection with the alleged case, he is said to have registered under section 447 I.P.C., been produced. In his cross-examination he said that the information about the incident at the Dak Bungalow was first sent to the police station by Chaturbhuj, who had gone there to give that information, and that Chaturbhuj is a congress man and was interested in the Congress. But this Chaturbhuj has not been produced and examined. Neither does Ripu Haran Singh say anything in his deposition about these abuses and threats to assault. Abuses might be covered by the slogans but there is nothing in the oral evidence of the respondent except the testimony of the last witness, Shri Narain Das Mehta, to show that any threat to assault was ever made. In my view, therefore, there was not sufficient material to justify the Sub-Inspector of the Police to recommend, and for the S.D.O. to agree, for passing an order under section 144 Cr. P.C. banning meetings and processions on this ground.

Fifthly, about the arrest of the respondent's workers. Respondent's witnesses generally, except Sub-Inspector Ripu Haran Singh and S.D.O. Shri Narain Das Mehta, who spoke of the Gangapur incident, denied any knowledge of the arrests of the petitioner's workers. Ripu Haran Singh says that he had also made a report on the 19th January that proceedings under section 107 Cr. P.C. be started against certain persons, and in pursuance of that report warrants were issued and six or seven persons were arrested. Arrests were made some time in the evening of the 19th January, and they were produced before the S.D.M. on the very day they were arrested. The report referred to is Ex. P.9 and is against 16 persons. It says that the Hon'ble Revenue Minister Shri Tikaram Paliwal had been staying at the Dak Bungalow, and that 16 persons mentioned therein and many others went to the Dak Bungalow, abused the Hon'ble Minister and Ridhi Chand Paliwal, and also threatened to beat them as well as one Chaturbhuj, a Congress worker, and, therefore, he apprehended that there would be a breach of the peace unless these persons were arrested, and prayed that warrants for their arrests should be issued against them, and action under section 107 Cr. P.C. be taken. The allegations in this report, Ex. P.9, are exactly the same as in the report Ex. P.4, by which the S.I. asked for the order under section 144 Cr. P.C. prohibiting meetings and processions, except that in Ex. P.4, it is stated that Shri Paliwal and others were abused and threatened in the morning. Admittedly, Shri Paliwal came to Gangapur between 12 and 1 p.m. The S.D.O. Shri Narain Das Mehta said that on receiving the said report he examined Ripu Haran Singh on oath and passed an order for issue of warrants for their arrest. It appears from the statement of Ripu Haran Singh on oath that all his knowledge about abuse and threat of assault on Shri Tikaram Paliwal, Ridhi Chand Paliwal and Chaturbhuj was derived from them. He had no direct knowledge about the threat or abuse, and the grounds alleged by him in the report are also absolutely identical with those made in the previous report Ex. P.4, in which he asked for an order under section 144 Cr. P.C. prohibiting meetings and processions. Except the alleged incident at the Dak Bungalow, mentioned above, no other incident has been alleged. There was no evidence or proof that any of the arrested persons were parties to the Dak Bungalow incident. Shri Tikaram Paliwal, Ridhi Chand, respondent No. 1, and Chaturbhuj, who were mentioned as witnesses with 6 others in Ex. P.9, were not examined. So practically there was no evidence of any threat to assault or kill, so as to justify any proceedings under section 107 Cr. P.C. and arrest the petitioner's workers. The case under section 107 Cr. P.C. also ultimately failed. No evidence was adduced and the case was not proceeded with.

In order to make out a case that there was some justification for the arrests, the respondent has brought in an allegation that one Abdur Rahman, R.1/W.6, was one of his main workers and had been assaulted by Jan Sangh people. The first witness on the point is R.1/W.2 Gulab Chand. He says that at about 1 p.m.

he was passing by the Dak Bungalow on his way to the telephone exchange when he saw some people raising slogans and as he was passing by, one Mishri Lal said to the people standing there—"Here is a Gunda going". Thereupon he ran away from the place and immediately reached the Post Office. Thereafter one Mohan Lal came to the Congress Office and gave information that Jan Sangh workers had beaten Abdur Rahman. Hearing this he and a few others reached the place where Abdur Rahman was alleged to have been beaten, and saw that Jan Sangh workers were surrounding Abdur Rahman. Some were pulling his mustaches and some were holding him fast. About 400 to 500 persons were present there and he and two or three others rescued Abdur Rahman, who immediately ran away, and went into his house. Shri Jagannath Paliwal, who was a brother of the respondent No. 1, was standing near them at the time, and they sent him to the police station to make a report. Within about 10 minutes the police came on the spot, took Abdur Rahman out of his house, and dispersed the crowd by means of persuasions. The police took Abdur Rahman with them. In cross-examination he says that he was informed about Abdur Rahman's being surrounded by Jan Sangh workers at about 6 p.m. He further said that he could not give the name of the persons whom he saw holding Abdur Rahman. The next witness is R.1/W.3 Mohan Lal, who says that on the 19th at about sunset he found Abdur Rahman being seized by a crowd near his house and nothing further. In cross-examination he said that he could not give the names of any of the persons who were surrounding Abdur Rahman or say which of them belonged to Jan Sangh or other party. Abdur Rahman himself, who is R.1/W.6 gives the following version about this incident:—

"At about 6 p.m. when we were about to take out procession, we came to know that the taking out of processions and holding of meetings were banned. I, therefore, went to my shop, and closed it, and when I was going to my house, I met a crowd of 400 to 500 Jan Sangh people in the way, just near my house. These people seeing me fell upon me and about 7 or 8 persons from crowd began to assault me, some by pulling my mustaches, some by catching hold of my neck, some by belabouring me". Then he says,—"Some Muslims were at that time coming from the mosque and a few Congress workers also came to the spot. They rescued me, and I immediately rushed into my house and closed the shutters..... Then the police came, and took me out of my house. I made a report to the police". Then in his cross-examination he says that 6 or 7 persons, whose names he did not know held him fast and many others rushed towards him, but he was rescued. It took about one minute only. As soon as he was rescued, he got inside his house and closed the shutters. He did not know whether the crowd attacked any of his rescuers. He says that he was given only one or two slaps, and he had received no injury. The Sub-Inspector was among the Police who came and rescued him, but no statement of his was recorded at the Police Station. Nobody was examined by the police though he had told the police that he could recognise his assaulters by face. No prosecution was started on the basis of his report. R.1/W.11 Ripu Haran Singh says, "A report was made by one Abdur Rahman of Gangapur on the 19th January. I made investigation in pursuance of that report. While petrolling after the promulgation of section 144 Cr. P.C. I learnt that some non-Congress people were loitering about Abdur Rahman's house and there was danger of some Jhagra with him. On learning this I reached Abdur Rahman's house, I found Abdur Rahman at his house and he made a report to me. I found his door closed, and more than 50 persons were found at a distance of about 50 paces from his house." R.1/W.14 Mathura Lal says, "At 7 p.m. that very day Jan Sangh Workers surrounded Abdur Rahman's house, and threw stones in his house and raised the slogan 'Congress ki kiva pahilchan Luchha, Gunda, Bayman'. There a mosque called Jama Masjid near the house of Abdur Rahman. I was there at that time, and remained there for about 20 to 25 minutes. When the Jan Sangh workers surrounded Abdur Rahman's house and had moved to a place near Jama Masjid, a few police employes came to that place. The Sub-Inspector Ripu Haran Singh was among them. They went to Abdur Rahman's house and found that the door of his house was shut from inside. They asked him to come out, and he came. Abdur Rahman then wrote out a report, and handed it over to the Sub-Inspector. The Sub-Inspector thereafter took Abdur Rahman to police station".

It is significant that this witness does not say anything about any assault on Abdur Rahman. R.1/W.15 Shri Narain Das Mehta, S.D.O. in his deposition says.

nothing about this Abdur Rahman affair, but he proves a report Ex. R1/5 which purports to be a report on the situation prevailing at Gangapur on the 19th January, which he submitted on the next day, i.e. 20th January to the District Magistrate and the Commissioner. From this report it appears that the S.D.O. reported that he got a report that Abdur Rahman had been threatened with life and beaten and his house had been surrounded by the people who intended to murder him. At once he instructed the S.I. to go to the spot and to report about the situation. S.I. came after visiting the spot with Abdur Rahman, and told him that the people who surrounded the house of Abdur Rahman had dispersed. Abdur Rahman told him that he was beaten with shoes and stones while he was distributing chits for Ridhi Chand. As to the character and value of this situation report, Ex. R1/5, reference will be made hereafter, but it will appear from the above statements made by different witnesses that the statements are discrepant. None of the witnesses could name any of the persons who are said to have assaulted Abdur Rahman. Abdur Rahman says that he could recognise his assaulters by face, but no attempt seems to have been made to identify any of those persons. Nobody suggests that any of the persons arrested was amongst the assailants. Abdur Rahman says that he made a report to the police, and Mathura Lal says that it was a written report, but that report has not been produced. Abdur Rahman says that he was given only one or two slaps and his mustaches were pulled. Gulab Chand also deposes to the same effect. But Mathura Lal, though present at the spot does not say that there was any assault on Abdur Rahman. No other witness has said anything about the nature of the alleged assault, but the S.D.O. in his situation report makes out a story that Abdur Rahman was threatened with his life, beaten with shoes and stones. While Abdur Rahman says that he was attacked while he was returning from his shop, the situation report of the S.D.O. has embellished it by saying that he was attacked while he was distributing chits of the name of Ridhi Chand candidate. According to the witness Gulab Chand, Respdt. No. 1's brother Jagannath Paliwal was sent to the Police to report about the assault on Abdur Rahman, but he has not been examined. The S. I. Ripu Haran Singh says that he got a report from Abdur Rahman and that seems from his evidence to have been before he got the news about the assault. But that report has not been disclosed. Then again the S.I. says that he got the news of the assault while he was patrolling after the promulgation of the order under section 144 Cr. P.C. but the S.D.O. says that he called the S.I. and sent him to rescue Abdur Rahman. Abdur Rahman himself says that after he was surrounded he was rescued within one minute, by 2 or 3 persons out of an attacking mob of 300 or 400 persons. From this also it would appear that the allegations made could not be quite correct. From the nature of discrepant evidence mentioned above, it is difficult to accept the story as correct.

This event regarding Abdur Rahman according to the respondent's evidence happened between 6 and 7 p.m. But even according to the Sub-Inspector, Ripu Haran Singh, the arrests were made at about 5 p.m. According to the petitioner's evidence, the arrests of the seven workers were made on the 19th January at about 3 p.m. and of one other on the next morning. In Ex. P.23, application for release filed before the Sub-Divisional Officer on the 19th—the petitioner mentioned that his workers were arrested at 3 p.m. and his witnesses also support him. There is no reason to disbelieve them, as against a single uncorroborated statement of Sub-Inspector Ripu Haran Singh. The Sub-Divisional Officer in his deposition does not make any definite statement about the time of the arrests or of the order for arrest. But according to his situation report (Ex. R1/5), the order for arrests was made before the alleged Abdur Rahman affair.

It has been suggested by the learned counsel for the petitioner that when the arrests were made, the warrants themselves were not in existence, and, therefore, also the arrests were absolutely illegal and arbitrary. It has been stated before that the petitioner's evidence showed that the arrested persons were not shown any warrants at the time of their arrest, and they repeatedly asked the reason for their arrest. No answer was vouchsafed to them. The relevant evidence on this point is that of P.W. 17, Gokul, and P.W. 18 Damodar Prasad. Their statements regarding the non-production of any warrant and non-statement of any reason for the arrests either at the time of the arrest or at the police station thereafter, in spite of their repeated queries, have not been contradicted at all by the respondent in his evidence. The official witnesses, Ripu Haran Singh, Sub-Inspector of Police, and Shri Narain Das Mehta, Sub-Divisional Officer, have not contradicted these statements, and the witness Damodar Prasad was not even challenged in his cross-examination in regard to these statements. It would appear from the evidence of Sub-Inspector Ripu Haran Singh and that of the S.D.O. Shri Narain Das Mehta that they have not been able to give any definite indication as to when the order for arrest was made, when the warrants were prepared, and

when the actual arrests were made. In their statements either in the examination-in-chief or in cross-examination they have preferred to remain vague and indefinite on this point, and have made statements which are irreconcilable. Shri Narain Das Mehta has replied to the questions in cross-examination only to evade them by saying "I do not remember", "I cannot say". He has parried very material and important questions in this way over two dozen times, and these matters were matters which ought to have been remembered. A witness with such lapse of memory—assuming that he was not intentionally suppressing would command little respect and credence. There is, therefore, no evidence to suggest that at the time of arrest warrants were produced or reasons for the arrests were made known to the arrested persons.

That the action of these officers in making the arrests was not quite *bona fide* will appear further from the position with regard to the release of the arrested persons on bail. The petitioner has produced a certified copy of his application Ex-P 23 which shows that he stated therein that his workers were arrested at 3 p.m. on the 19th, and he prayed for their release. The learned Magistrate (R.1/W.15) in his situation report, Ex. R.1/5 stated, "After this, members of the opposite party moved an application for bail. It was 11 p.m., therefore, I told them that I will consider the application tomorrow in the morning". In his evidence in court, however, he changes this story, and says, "Shri Kishan Lal Vakil on behalf of Jan Sangh party came to me after these arrests at about 8 or 9 p.m. and asked me to release the arrested persons unconditionally, but I told him that they could not be released unconditionally, but on bail. The arrested persons did not offer any bail in the night". So whereas in his statement in the situation report alleged to have been made on the 20th of January, he says that the opposite party moved an application for bail, in his deposition he said that there was no application for bail but a verbal application for unconditional release. When in cross-examination he was confronted with Ex. P. 23, the application for bail, he had to admit that it was filed before him on the 19th January, but he did not remember the time. He remembered the time of the verbal application of Kishan Lal Vakil, but not that of the written application—not even whether it was before or after dusk. He then gives the explanation like this:—

"The witness seeing the original of Ex. P. 23 said that "it was filed before me." On that I asked a report from the Sub-Inspector, which was made to me. I made an order on this application that the requisite stamp be called for, and it be put up with the file. I do not remember if this application was put up before me afterwards with the file. I do not remember exactly when Ex. P. 23 was submitted to me. I cannot say whether it was before or after dusk."

On a reference to Ex. P. 23 it does not appear therefrom that any reference was made to the Sub-Inspector of Police, as stated by the S.D.O., nor does it appear that any stamp was called for. It may be mentioned that in the other application Ex. P. 1 (Ex. P/8) for relaxation of the ban against processions and meetings, it appears from the document itself that a reference was made to the Sub-Inspector of Police, and he made a report, and thereupon some directions were given, but such is not the case with Ex. P. 23. The S.D.O. also does not say on what point the reference to the Sub-Inspector was made. If it was as to the propriety of releasing the arrested persons on bail, there is nothing to show what the report of the Sub-Inspector was. If the S.D.O. thought that bail should not be given to these persons at the time, because their liberty might jeopardise peace and order, there was nothing to prevent him from passing an order to that effect, but he has taken recourse to a subterfuge about stamps evidently to delay the matter.

The arrested persons, Gokul and Damodar Prasad, P.Ws. 17 and 18, had complained in their depositions that after they were put behind the bars, no food was given to them. Neither any clothes to cover themselves during the night 19th January was a wintry night. This statement has not been contradicted by the Sub-Inspector or the Sub-Divisional Officer, nor challenged by the respondent in cross-examination. Further one other worker of the petitioner was arrested the next morning, the day of polling, and he was brought in handcuffs through the streets from the police lock-up to the court. This statement has also not been challenged or contradicted. These actions on the part of these officials would also show that their actions in arresting these persons were not *bona fide*, and they had taken recourse to these actions simply for the purpose of terrorising the people, who were supporting the petitioner in his election. Reference was made to the events which happened at Vazirpur on the 15th January in the

evening in this connection. That question has been previously dealt with under issue No. 5. The petitioner's case was that three of his workers were arrested at Vazirpur on that day, which was the day previous to the polling. I have already found that the evidence adduced by the petitioner was not sufficient to enable me to hold that such arrests were made. But it is necessary to refer to this matter because in the situation report of the S.D.O. Ex. R.1/5, he has mentioned the affair at Vazirpur as one of the reasons which induced him to pass the order later at Gangapur prohibiting meetings and processions. In the situation report, however, he does not say that an order under section 144 prohibiting meetings was passed at Vazirpur. The Sub-Divisional Officer, however, says that "in other parts of the country processions and meetings are reported not to have taken place on previous day to the day of polling and in this sub-division also the same practice was followed". Evidently this was not correct, because processions and meetings were held in Vazirpur without any interference from the authorities, and there is no evidence whatsoever to show that in this Constituency or in other parts of the country meetings were either not held or prohibited even on the day previous to the polling. The respondent while leading his evidence tried to make out the case that when he was taking out a procession at Vazirpur on the 15th January, the day previous to the polling, his procession was attacked by the men of the opposite party, and some of his workers, including the above-mentioned Abdur Rahman, were assaulted, and that thereupon an order was passed prohibiting meetings at that place. When the petitioner tried to make out a case that some of his workers were arrested (it may or may not be for the reason of this attack on the respondent's procession), the respondent tried to minimise the affair, and in cross-examination of the petitioner's witnesses suggested that nothing happened there. This Vazirpur affair was brought in the respondent's evidence as a justification for the orders under section 144, Cr. P.C. and the arrests, and in order to strengthen his case thereunder. But, as a matter of fact, from the nature of the evidence adduced, it is very doubtful whether anything of the nature sought to be proved by the respondent had happened at all at Vazirpur. While some of the respondent's witnesses said that the S.D.O. issued orders for the arrest of some of the petitioner's workers, the Sub-Divisional Officer himself denies that he passed any such order for arrests. The main witnesses for the respondent on this point are Sub-Inspector Ripu Haran Singh and the Sub-Divisional Officer Narain Das Mehta. It has already been mentioned in connection with issue No. 5 that there was no evidence to show as to who sent the information about obstruction to the respondent's procession at Vazirpur. The Sub-Inspector says that one Kalyan Prasad made a report to him regarding the rioting. But Kalyan Prasad was not examined, and though a case was started, it was filed "as occurrence not having taken place (Adam Vaguva)". It also appears from Ripu Haran Singh's evidence on the point that when he and the S.D.O. reached Vazirpur, the meeting of Rikhab Das's party had terminated, and the meeting of the Congress party was going on. It is said that the order under section 144 of the Code of Criminal Procedure was promulgated at about 10 p.m. and the Congress meeting dispersed as soon as the order under section 144 Cr. P.C. was promulgated. At the time when the meeting dispersed, Shri Tikaram Paliwal was addressing the meeting, but as soon as he heard the announcement regarding prohibition of the meeting, he stopped speaking. The S.D.O. Shri Narain Das Mehta, says, "Shri Tikaram Paliwal had sent a jeep to fetch me from Gangapur, but I had already started, and the jeep met me in the way". Then his evidence is that he reached Vazirpur at about 8 or 9 p.m. After arriving there, he studied the situation, and then promulgated section 144. When he promulgated section 144, no procession was being taken out at that time, and the Congress meeting was being held peacefully at that time. At that time no meeting of Jan Sangh was in progress. He means to say that he did not meet Shri Tikaram Paliwal after his arrival at Vazirpur, though the latter sent a jeep to fetch him from Gangapur—for what purpose, it is not disclosed. He says that he met Shri Tikaram Paliwal after section 144 was promulgated and not before that, and that on the announcement being made, the meeting dispersed and Shri Tikaram Paliwal stopped speaking. It would be a tax on one's credulity to believe that when a Minister sends a car to bring an S.D.O., the S.D.O. on arrival would not see the Minister, but would forge a gag to stop him from addressing a meeting. This case has been made only to show that the S.D.O. was acting independently of the Revenue Minister, Shri Tikaram Paliwal. Knowing the sensibilities of some of the Ministers now-a-days, it is difficult to believe that a Minister having sent for the S.D.O. would tolerate him, without his knowledge or connivance, to prepare an order gagging him from addressing a public meeting. As a matter of fact, there is no evidence whatever to show that any order under section 144 was actually promulgated at Vazirpur. There is no documentary evidence to prove it, and the order itself has not been produced as in the case of Gangapur. It seems very probable

that the story of Vazirpur on the alleged promulgation of section 144 there was introduced simply to support the case for promulgation of the later order at Gangapur.

In the situation report mentioned above, the S.D.O. also made some statements, which raise a suspicion as to how far the story given by him regarding the events at Gangapur on the 19th January was true. He says, "The Jan Sangh party took the advantage of the time between 3 and 4 P.M. on 19th January and took out a procession in a truck calling bad names to Hon'ble Revenue Minister and the Government". This is a story which a novel one, and has not been stated by anybody else in the course of hearing. He himself has not stated anything about this in his deposition. Anyhow, it would seem from this statement that the prohibition under section 144 against meetings and processions was made some time before 3 P.M. Next he says, "At about 6 P.M., while I was returning from the Post Office, I saw a number of people shouting Jan Sangh slogans, carrying Jan Sangh flag, and defying the order promulgated by me under section 144 Cr. P. C. There was no force with me to disperse them and, therefore, I came to my office and sent a chaprasi to the Police Station for force. The Sub-Inspector readily came and I told him to look into the situation. After a few minutes he came back and reported that there is no crowd of people and procession has melted away". This is also a story which has not been supported by any evidence on the record. S. I. Ripu Haran Singh has not said anything about these two processions. It would seem, therefore, that this situation report of the learned Sub-Divisional Officer was a cooked up one, and was prepared with a view to support his illegal and improper actions. It was produced by the S.D.O. on the last day of the evidence and was objected to by the petitioner.

From the above considerations I have no hesitation in finding that there was no sufficient reason for the promulgation of the prohibitory order under section 144 against meetings and processions, and that the arrests of the workers of the petitioner on the 19th and 20th were quite arbitrary, illegal and *mala fide*.

Now the question arises as to the responsibility for these actions and their effect on the election proceedings. The petitioner's case was that all these things happened at the connivance of Shri Tika Ram Paliwal. The respondent's counsel has argued that even if Shri Tikaram Paliwal may be held responsible for these actions, there was nothing to show that the respondent No. 1 himself had any hand in the matter, and, therefore, he could not be made responsible therefore. With regard to the responsibility of Shri Tikaram Paliwal in these matters, though it has been the case of the petitioner persistently from the time of the orders and arrests that it was at the instigation of Shri Tikaram Paliwal that these actions were being taken, there is no direct evidence to connect Shri Tikaram Paliwal with them. Of course, Shri Tikaram Paliwal was present at Vazirpur to address a Congress meeting held on behalf of the respondent No. 1, he was, according to the respondent's case, also to address a similar meeting at Gangapur. So that he was taking an intimate part in the election campaign on behalf of the respondent. The respondent was a Congress candidate, and Shri Tikaram Paliwal was a member of the Congress Government, and, therefore, it is argued that whatever Shri Tikaram Paliwal has done he has done for the benefit of the respondent No. 1, and respondent No. 1 having reaped the benefit thereof, cannot now repudiate the liability therefor. The S.D.O. Shri Narain Das Mehta, has in his evidence, stated that whatever he did, he did on his own responsibility, and he had no consultation with Shri Tikaram Paliwal about the promulgation of the prohibitory order. But it is a fact that he has seen the Hon'ble Minister twice or thrice on the 19th and also on the 20th. He says, "I did not see Shri Tikaram Paliwal at Gangapur before I took proceedings under section 107, but I saw him afterwards before I could make an order of bail relating to the arrested persons". The petitioner's case was that the prohibitory order, the arrests, and the refusal to release on bail were all made at the instance and instigation of Shri Tikaram Paliwal. The frequent interview of the S.D.O. with the Minister certainly raises a suspicion that such might be the case, but mere suspicion is no proof, and on the evidence as it stands, it is difficult to fix the liability for these actions on Shri Tikaram Paliwal.

When corrupt practices are alleged in an election petition, its trial assumes the nature of a criminal case, and the evidence and circumstances proved in the case must be judged as in a criminal case. As stated above, there is no direct evidence that Shri Tikaram Paliwal engineered the prohibitory order or arrests of the petitioner's workers. Whatever evidence there is circumstantial in nature. Before basing a decision on such evidence, every reasonable hypothesis consistent with the innocence of the persons charged must be excluded. Except the presence of Shri Tikaram Paliwal at Gangapur at the time and his previous participation in the election campaign on behalf of the respondent, there is no other direct evidence to prove that he had any hand in the promulgation of the order under

section 144 Cr. P.C. and the arrests. These could be explained by other possibilities also. The S.D.O. takes up the sole responsibility upon himself for these actions. Though these actions, as said above, were quite unjustifiable and unfair, yet it is possible that the S.D.O. might have taken these actions in order to please his superiors who were in a way interested in the Congress candidate, that is the respondent No. 1. That is a possible hypothesis. There are other hypothesis which also could be possible. Therefore, in the absence of any positive evidence, the suspicion, however, strong is not enough for coming to a finding that Shri Tikaram Paliwal was responsible for these actions.

Then apart from Shri Tikaram Paliwal's responsibility in the matter, a further question has been raised by the respondent that there is no evidence, nor, as a matter of fact, any allegation, that the respondent No. 1 had any hand in these alleged corrupt practices. This is also correct because no evidence has been adduced to show that the respondent No. 1 had any hand in these matters. It appears from the evidence of one of his witnesses, Ramjilal, that the respondent was not doing much of election work personally, and other people must be doing the same for him. The witnesses for both the parties have referred to processions and meetings for both the parties as either Congress meetings and processions or Jan Sangh meetings and processions, which show that the election was fought more on party basis than an individuals contesting. But the actions complained of have not been shown to have been brought about by any responsible officer of the Congress party on whose behalf the respondent No. 1 contested the elections. Shri Tikaram Paliwal has not been shown to be an office bearer or responsible person of the local Congress. He might be a Congress Minister and a Congress leader; but apart from addressing meetings on behalf of the Congress party, he has not been shown to have taken any responsible part in the election of the respondent No. 1. Therefore, even if Shri Tikaram Paliwal had been found to be guilty of procuring these orders and arrests that would not bind the respondent No. 1. The learned advocate for the petitioner tried to bring in the law of agency and suggested that in election, a person who does a thing for a candidate is constituted as an agent for him. "Agent" has been defined in section 79 of the Act, where it is said that

"'Agent' includes an election agent, a polling agent and a counting agent and any person who, on the trial of an election petition or of an offence with respect to any election, is held to have acted as an agent in connection with the election with the knowledge or consent of the candidate."

Therefore, whatever is done must be done with the knowledge or consent of the candidate. That knowledge or consent on behalf of respondent No. 1 has not been alleged or proved. It is, therefore, difficult to make the respondent No. 1 responsible for these alleged actions even assuming that they were procured by Shri Tikaram Paliwal.

The next question is that as the acts complained of, *viz.*, the prohibitory, orders and arrests, have been found to be *mala fide*, what could be its effect on the election. On the findings as they stand, the Sub-Divisional Officer and the police officer were responsible for these actions. These actions no doubt constitute undue influence by way of intimidation against the petitioner's workers and supporters, but in order to bring these actions under the mischief of section 100 clause (1) (a) of the Act, these actions must have prevailed at the election extensively so as to enable the Tribunal to hold that the election has not been a free election. But as a matter of fact, this is the only allegation of corrupt practice of undue influence by way of intimidation found to be true, and it was the last day of the polling. So it cannot be said that corrupt practices extensively prevailed.

Next it was suggested on behalf of the petitioner that the acts would come under the mischief of section 123, clause (8) of the Act, namely, that these acts were calculated to assist the respondent No. 1 in furtherance of the prospects of his election. Clause (8) of section 123 penalises assistance from persons serving under the Government for the furtherance of the prospects of a candidate in his election, such assistance is obtained, procured, abetted or attempted to obtain or procure by a candidate or his agent. Assuming that these actions had been of some assistance to the respondent No. 1 in furtherance of his prospects at the election, the question is who obtained that assistance? If some Government officers chose of their own initiative to give assistance—be it for their personal inclination in favour of a particular candidate or be it for obligating their superiors or any other cause, would it by itself be a corrupt practice under section 123 clause (8)? On a serious consideration of all the facts and circumstances of the case and the law bearing on the point, I am unable to hold that unless it is shown that the candidate or his agent or any other person with their connivance

had obtained or procured such assistance, it would not be a corrupt practice under section 123, 81 (8) however reprehensible these acts might otherwise be. It is, therefore, not possible to hold that the acts complained of would invalidate the election and issues Nos. 6 & 7 are answered accordingly.

In view of my finding that the prohibitory order under section 144 Cr. P.C. was not justified, it is not necessary here to go into the question as to whether or how far the provisions of section 127 of the Act have affected the powers of the authorities in charge of law and order to control, regulate or prohibit election meetings.

Issue No. 18.—In view of the order, which is proposed, it is not necessary to go into this issue.

As a result of my findings on Issues Nos. 1 to 17, the petitioner is not entitled to any relief claimed, and his petition should be dismissed.

(Sd.) P. L. SHOME, Member.

The 19th December 1953.

(Per SHRI KAUL, MEMBER)

I have had the benefit of going through the judgment of my learned brother Shri Shome and while I agree entirely with his findings on issues 1 to 17, I consider it necessary to record my observations, separately, in regard to the matters which are the subject of issues Nos. 6 and 7 and as to their bearing on issue No. 17.]

Issue No. 6 is as to whether section 144 of the Criminal Procedure Code was promulgated in Gangapur Town on the 19th January 1952 banning meetings and processions, and Issue No. 7 is as to whether sixteen workers of the petitioner were arrested on the 19th January 1952 at Gangapur.

As to Issue No. 6 it has been already found on the basis of the admission made on behalf of respondent No. 1 himself that section 144 was in fact promulgated, as stated in the issue. As to Issue No. 7, also, it has been found on the basis of subsequent admissions of both sides that only 7 workers of the petitioner were arrested on the 19th January, although warrants were issued against sixteen workers.]

The question now for decision under issue No. 17 is as to whether the two actions comprised in Issues Nos. 6 and 7 amounted to corrupt practices and have the effect of invalidating the election.

The petitioner's case, as originally stated in the petition is contained in sub-para. (h), (i) & (j) of para. No. 13 of the petition. In sub-para. (h) of para. 13, the petitioner has stated that on the 16th January 1952 at Wazirpur the police and officers made indiscriminate arrests of some of the leading workers of the petitioner at the behest of Shri Tikaram Paliwal, the then Revenue Minister, who was there at Wazirpur to extend his personal support to respondent No. 1 by striking terror among illiterate voters. In sub-para. (i) it was stated that on the 19th January 1952, even worse things followed at Gangapur, that section 144 Cr. P.C. was promulgated prohibiting the carrying of arms, and, soon after the arrival of Shri Tikaram Paliwal, the ban was extended to meetings and processions in order to prevent the petitioner from taking out a procession and holding a public meeting which had been already arranged, and thus stop the working of the petitioner's propaganda machinery.

In sub-para. (j) it was stated that on the same day (that is the 19th January 1952), soon afterwards warrants of arrest for 16 leading workers of the petitioner were issued at the instance of Shri Tikaram Paliwal, who was pulling the wires from the Dak Bungalow, and seven of the workers were arrested without any cause and kept in the police lock-up till 12 noon the next day, (the date of polling)—some of them having been hand-cuffed and paraded in the city. All this, according to the petitioner, was done with a view to terrorise the electorate and finally discourage them from voting for the petitioner, who thus lost more than two thousand votes.]

In his written statement, respondent No. 1, stated in reply to sub-para. (h) of para. 13, that the allegations contained in it were not true and were, therefore, not admitted and in reply to sub-para. (i) and (j) of the petition, the respondent stated that the allegations contained in them were not admitted. In his additional grounds the respondent further stated generally that it had not been alleged that the so-called corrupt practices alleged in the petition were within the knowledge or with the consent and connivance of respondent No. 1, and the result of the election had not been alleged to have been materially affected by the corrupt practices.]

It will be seen from the above that while the petitioner has attributed the actions comprised in issues 6 and 7 to the instrumentality of Shri Tikaram Paliwal, there is no specific allegation in the petition that these acts were committed with the knowledge and consent or with the connivance of the successful candidate or his agents. Even in his statement recorded under O. 10 r.1, the petitioner did not make any such allegation and it will also be seen that respondent 1 had raised this objection at the earliest opportunity.

In his evidence the petitioner (P.W. 2) has stated at pages 4 and 5, that after he had announced at Gangapur that a procession would be taken out on the 19th January, section 144 was promulgated by Shri Narain Das Mehta, S.D.M., Gangapur, forbidding the carrying of weapons, that within an hour or so after the arrival of Shri Tikaram Paliwal at Gangapur another order was issued under section 144 banning the holding of meetings or the taking out of processions, which was not relaxed in spite of his application Ex. P./8 made to the Sub-Divisional Magistrate. It was further stated by the petitioner, in his evidence, that warrants were issued on the 19th against 16 of his workers of whom only seven were arrested on the 19th and one on the 20th, that a complaint by the police Gangapur of which the certified copy is Ex. P.9 was made against these sixteen persons, that although he offered bail for them on the 19th, he was told by the S.D.M. that it would be taken the next morning and that bail was allowed the next day at 12 noon although the polling had commenced at 8 A.M. The result of all this, according to the petitioner, was that he remained occupied in connection with the efforts for bail and could not do his election work on the 19th and 20th, that other workers of his were scared away by these actions and he got approximately 300 votes as against about 3,000 as expected by him in Gangapur, while respondent No. 1 got about 800.

The only witnesses of the petitioner who have given evidence in support of issues Nos. 6 and 7 are P.W. 7, Nathilal P.W. 17 Gokul, P.W. 18 Damodar Prasad, and P.W. 19 Om Prakash Arya, of whom P.W. 17 Gokal and P.W. 18 Damodar Prasad were amongst those who were arrested. The evidence of these witnesses is generally to the effect that on the morning of the 19th January there was an announcement at Gangapur, on behalf of Jan Sangh, that a procession would be taken out at about 5 P.M. followed by a meeting, that in the forenoon there was a proclamation by beat of drums on behalf of the S.D.M. under section 144 Cr. P.C. banning the carrying of any weapons that Shri Tikaram Paliwal arrived there about noon that about 3 or 4 P.M. six or seven workers of the petitioner were arrested by the police from the Jan Sangh office and put behind bars in the police station where the Police even refused to tell them the cause of their arrest and to release them on bail in spite of repeated demands by the arrested persons and by the petitioner and that yet another worker, Chiranjilal, was arrested on the 20th morning and was taken to the Nazamgt. The evidence further goes on to say that no food or cover was supplied to the arrested persons during the night between the 19th and the 20th January that the next day they were produced in the Sub-Divisional Magistrate's Court, where proceedings under section 107 Cr. P.C. were started against them and that they were released on bail about 1.30 P.M. on the 20th January, after the polling had started; It was also stated that during the time that the arrested workers were before the Sub-Divisional Magistrate from about 9 A.M. to about 1.30 P.M. when they were released the Magistrate was twice called to the Dak Bungalow where Shri Tikaram Paliwal was staying and finally that after the release when some of the workers approached the voters to canvass support for the Jan Sangh candidate, they seemed to be very much terrified and there was an impression that those who voted for the Jan Sangh candidate might also be arrested since even prominent workers of Jan Sangh were not spared, with the result that at most of the polling booths visited by the arrested workers after their release, only voters with the Congress slips were found. According to the evidence of Gokal P.W. 17 and Damodar Prasad P.W. 18 the persons arrested apart from these two witnesses on the 19th were Chandanlal, Om Prakash Shop-keeper, Ram Sahai and Ratan Singh. According to the evidence of Om Prakash P.W. 19 the persons arrested apart from the above two witnesses were Ram Sahai, Ratansingh, Om Prakash Shop-keeper, Mishrilal and Chiranjilal. This last witness has further stated that after the arrests he went underground owing to fear of his own arrest. Gokal P.W. 17 stated also that after the arrested persons had filed their replies and after they had attended the Sub-Divisional Magistrate's Court on several hearings, the case was finally dismissed. The evidence of these witnesses excepting that of the petitioner himself is silent as to whether there was any proclamation on behalf of the Congress on the 19th January regarding taking out of a procession and even the petitioner is silent about any announcement regarding the holding of the meeting on behalf of the Congress.

While respondent No. 1 did not come into the witness box the witnesses examined on his behalf in connection with these two issues are R.1/W.2 Gulabchand, R.1/W.3 Mohan Lal R.1/W.6 Abdul Rahman R.1/W.11 Ripu Haransingh S. I. Police, R.1/W.14 Mathuralal and R.1/W.15 Narain Das Mehta, the then Sub-Divisional Magistrate at Gangapur. The general trend of the evidence of Gulab Chand, Mohanlal, and Mathuralal of whom the last is an old Congress worker while the rest were workers, on behalf of respondent No. 1, at Gangapur during the last General elections is to the effect that on the morning of the 19th January there was an announcement on behalf of the Congress that a procession would be taken out in the evening followed by a meeting which was to be addressed by Shri Raj Bahadur and Shri Tikaram Paliwal, that this announcement was followed by another announcement on behalf of the Jan Sangh also that a procession would be taken out under its auspices in the evening to be followed by a meeting at the same place at which the Congress meeting was announced to be held, that the Jan Sangh meeting would be addressed by Shri Bachchu Singh and other leaders of the Jan Sangh including Shri Hari Dutt. The evidence of these witnesses is further to the effect that the same morning there was a proclamation on behalf of the authorities banning the carrying of weapons in public that Shri Tikaram Paliwal arrived at Gangapur about noon the same day and stayed at the Dak Bungalow, which was surrounded, after his arrival, by a large number of Jan Sangh workers who were raising slogans such as "Congress Murdabad" "Shri Paliwal Ka Nash Ho" "Jan Sangh Zindabad" "Bachchusingh Ki Jai Ho" and "Congress Ki Kya Pahichan, Luchcha, Gunda, Beiman". The Dak Bungalow incident is stated to have taken place at about 1 P.M. according to the evidence of Gulabchand R.1/W.2 and at about 2 P.M., according to the same witness, there was a proclamation on behalf of the authorities banning entirely the taking out of processions and the holding of meetings. As I shall show, person presently, this proclamation, a copy of which is attached to the situation report Ex. R.1/5 sent by the Sub-divisional Magistrate, to the District Magistrate, banned the holding of meetings and the taking out of processions between 4 P.M. and 12 P.M. on the 19th January. It may, therefore, be safely presumed that the proclamation must have been issued a considerable time before the time at which it was to begin to have effect and the time of about 2 P.M. given by the witness, Gulabchand, does not, therefore, seem to be far from the truth. This witness has also referred to another incident alleged to have taken place at about 1 P.M. while he was passing the Dak Bungalow on his way to the telephone exchange. He stated that as soon as he passed the Dak Bungalow, Mishrilal, a worker of the Jan Sangh, said to those making a demonstration there "Here is a Gunda going," whereupon the witness ran away from the place and immediately reached the spot post office. Mohanlal, R.1/W.3, and Mathuralal R.1/W.14 have also referred to another incident. The former has stated that at about 5 P.M. while going to Chamarwala Mohalla, he passed by the Rest House and saw Shri Raj Bahadur's car standing near the police station, which is at a short distance from the Rest House, and found the car being pelted with stones by Jan Sangh workers, who were raising slogans such as "Raj Bahadur ka Nash ho", "Bachchu Singh Maharaj ki Jai ho", "Is Sari Gali Sarkar ko ek Thokar Mar Do", whereupon Shri Raj Bahadur who was in his car sent a man to the police station and sent for the Police. The witness further stated that he left Shri Raj Bahadur writing something. According to the evidence of Mathuralal R.1/W.14, Shri Raj Bahadur arrived at Gangapur about 2.30 P.M. and the witness, who is an old member of the State Congress Committee, went to meet Shri Raj Bahadur half an hour later at the Congress Office, where the latter was staying and subsequently went in his company to the Rest House. On the way, between the police station and the Muneemji ki Bagichi, stones were thrown at the car, according to the witness and at the Rest House subsequently telegrams were drafted and despatched to different authorities. I may state here that there is a reference in the evidence of R.1/W.15, Narain Das Mehta, Sub-Divisional Magistrate also, to the receipt by him of a telegram from Shri Raj Bahadur in regard to this incident. According to the sequence of events given by this witness the time of this incident of stone throwing at the car would also come somewhere between 4 and 5 and would not be very much different from that given by Mohan Lal witness. Evidently the incident must have occurred after the proclamation u/s 144 Cr. P.C. banning the holding of meetings and taking out of processions had been already issued.

Yet another incident to which there is a reference in the evidence of these witnesses is an alleged assault on Abdur Rahman R.1/W. 6 a Congress worker, by Jan Sangh workers followed by the surrounding of the latter's house by the workers and his subsequent rescue by the police after a report had been made to it. R.1/W. 2 Gulabchand's evidence, in regard to this incident, is that on hearing, in the Congress office, that Jan Sangh workers had beaten Abdur Rahman he and a few others reached the spot and saw Jan Sangh workers surrounding Abdur Rahman, holding him fast and pulling his mustaches in the presence of four to five hundred persons. The witness states that he and his companions rescued Abdur Rahman, who immediately went into his house and closed the shutters. Jagannath

Paliwal, brother of respondent 1, who was there, was immediately sent to the police station to make a report and in about 10 minutes the police came to the spot, took Abdur Rahman out of his house and dispersed the crowd by persuasion, after which Abdur Rahman was taken to the Police Station. Mohanlal R.1/W.3 has also stated that when he was returning to his house about sunset, he found Abdur Rahman, besieged by a crowd near his house which was raising slogans such as "Musalmanon ko Pakistan Jana Chahliya" and "Congress ka Nash Ho." It may be observed here that this witness had admittedly been a member of the Rashtriya Swayam Sewak Sangh, immediately before the last general elections, although during the elections he worked for respondent No. 1, and is not likely to have had any strong prejudice against the Jan Sangh. Mathuralal R.1/W.14 has also stated that at 7 P.M. on the 19th January Jan Sangh workers surrounded Abdur Rahman's house, threw stones at it and raised the slogan "Congress ki Kya Pahichan, Luchcha, Gunda, Baiman". The witness it is stated, watched this incident from a mosque near Abdur Rahman's house and later saw some policemen under Ripu-haran Singh, Sub-Inspector, going to Abdur Rahman's house and taking him out of the house which was shut from inside, after which Abdur Rahman wrote out a report and the Sub-Inspector took him to the police station. The witness has explained that Jan Sangh workers were putting pressure on Abdur Rahman in order that Muslim and Chamar votes might not go in favour of the Congress. Abdur Rahman himself has been examined as R.1/W.6 and has stated that about 6 P.M. when, after closing his shop, he was going towards his house he met a crowd of four to five hundred Jan Sangh people near his house out of whom seven to eight persons started assaulting him, some by pulling his moustaches, some by catching hold of his neck and others by belabouring him and these persons were raising slogans such as "turn out Muslims, they would vote only for Congress, they are parasites of the Congress". The witness further stated that he was rescued by a few Congress workers and by some Muslims coming from the mosque after which he immediately rushed to his house and closed the shutters from inside, and then people from the crowd threw stones and knocked violently at the door but the police came immediately afterwards and took him out of his house. The witness then made a report to the police and returned to the Congress Office where he slept for the night out of fear.

Then there is the evidence of R.1/W.11 Ripu-haran Singh Sub-Inspector, who is perhaps the most important witness in connection with these issues. He was incharge of the police station, Gangapur, during the last general elections. He states that before the polling day at Gangapur, some workers on behalf of different parties had arrived there of whom the majority were Jan Sangh workers, that on behalf of both the parties there were announcements, sometime in the forenoon about processions and meetings, the place of the proposed meeting being the same in both cases i.e., the bazar and the time of the procession having been given in both cases as between 4 and 5 P.M. It was also announced in both cases that processions would be followed by meetings of the respective parties. The speakers announced on behalf of the Congress for their meeting were Shri Raj Bahadur and Shri Tikaram Paliwal and from the other side Shri Gir Raj Saran Singh (Shri Bachchu Singh), the candidate for the parliamentary seat, and one other person. According to the witness the atmosphere at Gangapur on that day was tense and the first precaution taken by the authorities was a proclamation banning the carrying of arms in public. The witness proceeds to state that Shri Tikaram Paliwal, who arrived sometime in the forenoon stayed at the Dak Bungalow, where some people opposed to the Congress numbering 20 to 25 came after Shri Paliwal's arrival and, according to his investigation, raised cries such as "Paliwal Murdabad" and "Congress ki kya Pahichan, Luchcha, Gunda, Baiman". On a report lodged about this incident at Gangapur Police Station a case u/s 447 I.P.C. was registered followed by investigation by the witness himself after which he made a report to the Sub-Divisional Magistrate that a mere ban on the carrying of arms in public was not sufficient and that a ban on meetings and processions was also necessary. Thereupon a proclamation banning meetings and processions, entirely, was issued u/s 144 Cr. P.C. The witness also made a report Ex. R.1/4 dated the 19th January, 1952, to the Sub-Divisional Magistrate for the launching of proceedings u/s 107 Cr. P.C. against certain persons, in pursuance of which warrants were issued and six or seven persons were arrested sometime in the evening of the 19th January, and produced before the Sub-Divisional Magistrate that very day but released on the next day i.e. the 20th January. The witness has also stated that, while patrolling, after the promulgation of section 144 Cr. P.C. he learned that some non-congress people were loitering about Abdur Rahman's house and that there was a danger of some 'Jhagra' with him, whereupon he proceeded to the house where he found more than 50 persons at a distance of about 50 paces from it, most of them being Jan Sangh workers. The house was found closed from inside and Abdur Rahman made a report to the witness. In cross examination the witness stated that the report in regard to proceedings u/s 107 was made sometime in the after-noon and the arrests were made about 5 P.M.,

that the arrested persons were produced in the Sub-Divisional Magistrate's Court on the 20th January, but were ultimately discharged since witnesses did not appear and the apprehension of a breach of the peace had ceased. He also stated that when he approached Shri Tikaram Paliwal at the Dak Bungalow after the demonstrations there, he inquired from him whether there was any danger of a breach of the peace to him to which Shri Paliwal replied in the affirmative. The last witness Shri Narain Das Mehta, R.1/W.15 is another very important witness. He was the Sub-Divisional Magistrate at Gangapur during the last general elections. He stated that both the parties i.e. the Congress and the Jan Sangh had announced on the 19th January at Gangapur that they would take out processions and hold meetings both insisting on the taking out of the processions on the same route at the same time and that the meetings were also announced to take place at the same site. The witness, it is stated, even called the representatives of both the parties but failed to persuade them to settle different timings and different routes for their processions and different places for their meetings. The representative from the Congress side was stated to be one Mr. Banerjee and from the Jan Sangh side the petitioner and his representative at Gangapur. The witness further states that there was an influx of outsiders at Gangapur who were workers for both the sides and, as a precautionary measure, he issued a prohibitory order banning the carrying of lethal weapons in public. The witness went to meet Shri Paliwal at about 2 P.M. and after he had returned from there he received a report that Shri Paliwal was abused and threatened that he would be killed by the opposite party. Shri Raj Bahadur, it is stated, also met the witness and after a reference to the aforesaid incident at the Dak Bungalow represented the situation as very serious. Shri Raj Bahadur had also wired to him and told him personally that stones had been thrown at his car. The witness proceeds to state that he promulgated another order banning meetings and processions during the next eight hours, that both the parties later approached him for relaxation of the order so far as processions were concerned, the Congress representative being again Mr. Banerjee but that the Jan Sangh Party was more anxious about relaxation. On the 20th January the witness made a situation report Ex. R.1/5 to the Collector as well as the Commissioner.

In regard to the proceedings u/s 107, the witness stated that, having received a complaint in that connection on the 19th January, he examined the sub-inspector before issuing warrants, that after the arrest, about 8 or 9 P.M., Shri Kishan Lal Vakil came to him and asked for the unconditional release of those persons but was told by the witness that they could only be released on bail, but no bail was offered during the night and early next day in the morning he started the proceedings u/s 107 Cr. P.C., recorded some evidence and then ordered the release of those persons on bail. The witness also saw Shri Paliwal at Gangapur on the 20th after the start of proceedings but before he passed the orders for granting bail.

The above is the substance of the evidence of the two parties. On behalf of the petitioner, his learned counsel has argued that all his 16 workers were sought to be arrested, that the seven arrested persons although produced before the Sub-Divisional Magistrate on the very day of arrest as admitted by Ripuvaran Singh, were not let off on bail, that although section 144 had not been promulgated anywhere in India and there is a special provision in the Representation of Peoples Act, Section 127, designed to deal with disturbances of election meetings the authorities at Gangapur went out of their way to promulgate section 144 in spite of the fact that there had not been any riots at the eighty polling stations in the constituency where polling had already taken place, that there was ample evidence to show that the petitioner made repeated applications and efforts for the release of his workers without success and lastly that Abdur Rahman's story of assault was obviously a cooked up affair. It was also contended that the arrests were illegal as it appeared that Ex. R.1/4 and other papers had been concocted at night, after the arrest. He argues, in the result that the elections were not free and that there was sufficient evidence of major corrupt practices having been committed in support of respondent No. 1. He particularly laid stress on the fact that the petitioner's workers were proved to have been arrested at 3 P.M. on the 19th and kept in detention upto 2 P.M. on the following day, which showed that it was intended to paralyse the propaganda machinery of the petitioner and to prevent canvassing on his behalf as also to terrorise the prospective voters of the petitioner. It is, however, not possible to agree with these contentions of the learned counsel for the petitioner. There is ample evidence on both the sides to show that there had been a large influx of workers of the parties from outside before the polling day at Gangapur, the witnesses of respondent 1 alleging that several hundred Jan Sangh workers had come from outside but even the petitioner's witnesses having admitted that many of his workers had come from Karauli, Hindaun, and other places, vide evidence of Nathilal, Gokal, and Om Prakash. Then there is very strong evidence that sometime in the

morning of the 19th both the parties had announced the proposed taking out of processions followed by meetings in the evening. As already pointed out by me the evidence of the petitioner's witnesses is silent as to whether there was any announcement on behalf of the Congress in regard to the holding of a meeting and the taking out of a procession. But all the witnesses on the respondent's behalf have asserted, without being challenged in cross examination that there were announcements about the meeting and the procession from both sides although there may be slight discrepancies as to the exact sequence of these two announcements from the opposing sides. According to the respondent's witnesses the announcement on their side was made first and then followed the announcement from the Jan Sangh side. But it is immaterial which announcement was made first, and what matters most is that the time of both the proposed processions, according to the almost unanimous evidence of the respondent's witnesses, was after 5 in the evening, and the proposed place of the meeting was also the same in both the cases. On this point there seems to be no reason to disbelieve particularly the evidence of Ripuwaran Singh S.I. and of Shri Narain Das Mehta Sub-Divisional Magistrate, that both the parties insisted on taking out the processions at the same time and on the same route and to hold the meetings at the same place. The S.D.M. has also made a categorical statement that he made efforts to bring about a settlement between the parties as to different timings and routes for the processions and different sites for the meeting but failed. He has even given the names of the representatives of both sides with whom he discussed the question. This, by itself would have been a sufficient justification for the issue of a proclamation u/s 144 banning the holding of meetings or the taking out of processions. In considering the *bona fides* of the authorities in regard to the proclamation banning the meetings and processions it is important to remember that the first precautionary step taken by the authorities in the morning was a proclamation banning the carrying of arms only. The authorities, at that time could not have been unaware of the intention of the petitioner's party to take out a procession and to hold a meeting and they could have banned the meeting and the procession side by side with the ban on the carrying of arms in public.

There is, however, considerable additional justification for the issue of the second proclamation. Mohanlal R.1/W.3 has stated that the Jan Sangh workers who had come from outside roamed about in the town with hockey sticks and Abdul Rahman witness has also stated that the Jan Sangh workers were carrying *lathies* with them. There is a reference in the evidence of Ripuwaran Singh and in his report Ex. R.1/4 as to the existence of tension in the town, on that day. There is not the slightest reason also to disbelieve the evidence of the respondent's witnesses as to the demonstrations at the Dak Bungalow where Shri Tikaram was staying by at least 25 to 30 workers of the Jan Sangh in which slogans such as "Congress Murdabad" "Tikaram Paliwal Murdabad" (death to Paliwal) were raised. Then there is the evidence of Gulabchand R.1/W.2 that while passing the Dak Bungalow he heard Miurilal, one of the Jan Sangh workers who was subsequently arrested, saying "here is a Gunda going" to the crowd present at the Dak Bungalow, whereupon the witness ran from that place to the post office. Incidents such as these seem to have led the authorities at Gangapur to entertain an apprehension of a breach of the peace in view of the undoubtedly tense atmosphere there and of the influx of a large number of workers from both sides to exert their pressure in the last phase of the election battle. It may perhaps be that the slogans raised by the crowd at the Dak Bungalow howsoever objectionable are not of an uncommon pattern but they do smack of rowdiness and in a tense situation they might easily have led to a genuine apprehension of a breach of the peace. It is to be remembered that demonstrations such as these in front of a single outsider, howsoever influential, staying in a Dak Bungalow could not have been part of legitimate election propaganda and could even be interpreted as an attempt to intimidate a prominent member of the Congress Party who had according to all appearance come to Gangapur to address an election meeting on behalf of the Congress candidates and to further the Congress election campaign. According to the evidence of R.1/W.14 Mathuralal, which appears to be singularly free from exaggerations on such material points as the Abdul Rahman incident, fifty or so Jan Sangh workers who were at the Rest House for demonstration remained there for about half an hour raising slogans and showering foul abuses. In cross examination he even stated that the Jan Sangh worker left the place after throwing a challenge to Shri Tikaram Paliwal to come to the bazar and see what happened there. This witness was present during the demonstration, talking to Shri Paliwal at the Rest House along with Chatur Bhuj another Congress worker who made the report about this incident to the police, and he is therefore an eye witness whose evidence cannot be easily discarded. It is also significant that the petitioner's witnesses have generally fought shy of the incident at the Rest House when put questions about it and have even denied knowledge of the incident.

It has been argued that according to Shri Narain Das Mehta's evidence when he visited Shri Paliwal at the Rest House, about 2 p.m., the latter made no report to him about the demonstration there, and that if any thing had happened, as alleged in the respondent's evidence, Shri Paliwal could not have failed to report the matter to the Sub-Divisional Magistrate. But there is nothing in the evidence of the Sub-Divisional Magistrate to show that the demonstration at the Rest House had already taken place when he visited Shri Tikaram at the Rest House. On the contrary, his evidence is that just after he had returned from that visit, he received a report that Shri Paliwal was abused and was threatened. This shows that the demonstration must have taken place immediately after the Sub-divisional Magistrate had left. There is, therefore, no force in the argument about the omission of Shri Tikaram to make a report to the Sub-Divisional Magistrate. In fact it is in the evidence of Ripuhaman Singh that when he made an investigation, on receipt of the report about the occurrence, and asked Shri Tikaram as to whether he apprehended a breach of peace respecting himself, he replied in the affirmative. It is impossible to believe that such an episode with such categorical details concerning such a responsible person as the Revenue Minister could have been a pure concoction in order to support the issue of a proclamation, or any subsequent action that was taken, against the alleged demonstrators. In regard to the nature of the slogans, used during the demonstration at the Rest House, reference may also be made to the evidence of R.1/W.6, Abdur Rahman, who has stated that when he proceeded from the Railway Station to the Dak Bungalow certain persons who had gone to the Station to receive Shri Bachhusingh came directly to the Rest House and raised slogans like "Paliwal Kutta" "Congress Murdabad", and Congress ki kya Pahichan, Luchha, Gunda, Baiman". Two of these slogans are the same as have been referred to in the evidence of other witnesses. But as to the first slogan it is difficult to believe that even a witness like Abdur Rahaman, who has not impressed me as a trustworthy witness, could have invented such a derogatory slogan as having been uttered in respect of Shri Paliwal. The nature of these slogans thus seems to suggest that foul abuses or even threats might have been uttered by demonstrators at the Dak Bungalow. In the very nature of things the inquiry by this Tribunal was not concerned with the full details of all that had happened at the Dak Bungalow or its legal or practical consequences. But whatever evidence has been adduced is sufficient to lead to the conclusion that there could very naturally have been an apprehension from these incidents as to a possible breach of the peace if the meetings and processions were allowed as announced and that some further positive action apart from the mere banning of the carrying of weapons in public was necessary. There seems, therefore, to be no reason to doubt that the second proclamation u/s 144 entirely banning processions and meetings was not unjustified and in any case it equally hit both parties. It may be that no serious and sustained effort was made on behalf of respondent 1 as was made, evidently, by the petitioner and his party to secure a relaxation of this order u/s 144 at least in respect of the procession. But no unfavourable inference against the respondent can be derived from this alone. The petitioner's anxiety to make the maximum possible effort in this town seems to have been natural since, as I shall show presently Gangapur appears to have been a stronghold of respondent 1. The petitioner is a resident of Hindaun while respondent 1 is a hereditary resident of Gangapur, where, according to the unchallenged evidence of Mathuralal R.1/W.14 and of Gulabchand R.1/W.2, Respondent 1's son Gulabchand Paliwal was elected as the Chairman of the Municipal Board, after a recent Municipal election and from where respondent 1's father, Shri Ram Chandra Paliwal, had been previously elected to the Jaipur Legislative Council. It is also in the evidence of Mathuralal that the petitioner had rare occasions, normally to visit Gangapur while respondent No. 1 was a prominent moneylender of Gangapur having six or seven shops there and that there was no body in Sawai Madhopur District to compare with him in point of richness. It may be that in these circumstances respondent 1 had greater confidence about Gangapur town and did not make any sustained effort to secure a relaxation of the ban on processions and meetings. I may also observe here that it is not possible to agree with the argument that S. 127 of the Representation of People Act 1950 which only creates a special offence, is a substitute for S. 144 Cr. P.C. for election purposes.

It remains now only to deal with the point, stressed so much on behalf of the petitioner, as to whether the arrests of seven of the Jan Sangh workers were affected with the intention of paralysing the propaganda machinery of the petitioner and of terrorising the electors from voting in favour of the petitioner.

In this connection it may be stated, at the very outset that this Tribunal is not directly concerned with the question whether the arrest of these Jan Sangh workers and the proceedings u/s 107 were entirely justified. The only question for consideration by the Tribunal is whether there is no escape from the conclusion that the arrests were made with the set plan of depriving the petitioner

of his prominent workers and of creating terror in the minds of those who might be inclined to vote in his favour. I may say here that the argument that the arrests were made first and warrants and report etc. were cooked up later, does not appeal to me as the petitioner himself in sub-para (j) of his petition as also in his evidence only referred to the issue of warrants of arrest against 16 workers and impliedly to subsequent arrests of 7 workers only.

It has already been held above that there was a demonstration at the Dank Bungalow aimed against Shri Tikaram and not ostensibly connected directly with the propaganda machinery of the petitioner in which slogans almost smacking of rowdyism were uttered and possibly some threats were also uttered. This incident was followed soon after by a demonstration against Shri Raj Bahadur, another Congress Minister and himself a candidate for the Parliamentary seat, while he was in his car. According to the sequence of events the arrests of the workers of the petitioner were undoubtedly made after the Rest House demonstration and in all probability after the car incident, although it is the petitioner's case that the arrests were made about 3 P.M. as stated by him in his application Ex. P.8 made to the Sub-Divisional Magistrate in which case they have been made before the car incident. According to the evidence of Ripu Haran Singh, however, the arrests were made sometime in the evening and in his cross examination he clarified that they were made about 5 P.M. In any case even if the arrests were made before the incident with Shri Raj Bahadur's car that incident and the subsequent incident connected with Abdur Rahman do give an indication of the tense atmosphere in the town on that day. In regard to the latter incident, while the evidence of Gulabchand R.1/W.2 and of Abdur Rahman himself that he was surrounded by a crowd of several hundred people and assaulted and that his mustaches were pulled and he was even slapped or belaboured, seems to be greatly exaggerated or even concocted, the evidence of Mathuralal R.1/W. 14 and of Ripu Haran Singh R.1/W.11 about the house of Abdur Rahman having been surrounded or atleast having been threatened by a crowd loitering about it, seems to be quite correct and also the evidence as to Abdur Rahman having been taken out by the police while he was sitting inside with closed doors and threatening crowd nearby. In regard to Ripu Haran Singh's evidence particularly it has to be emphasised once again that throughout his statement, in spite of his being a police Officer who was appearing on behalf of the successful candidate and who had to deal directly with the situation at Gangapur and its complications he does not seem to have made any conscious effort or to suppress facts or to exaggerate the description of the various events, connected with these issues, as seems to have been done on some points by respondent's witnesses Gulab Chand and Abdur Rahman. For instance the number of the crowd at the rest house or at the house of Abdur Rahman as given by him is far below that given by other witnesses of the respondent. His evidence, therefore, can be believed substantially. Coming to the incident about Abdur Rahman as proved by the evidence of Ripu Haran Singh and Mathuralal it can be said that while it could not have been the cause of the launching of the proceedings under section 107 Cr. P.C. or of the arrests of the workers of the petitioner it does afford an indication of the temper of the petitioner's workers and supporters and the same may be said of the car incident connected with Shri Raj Bahadur even if it occurred after the order for the arrests had gone forth. All these incidents do seem to point to the absence of a peaceful atmosphere on the eve of the polling day and to the rowdy tendencies of the petitioner's supporters. It is quite possible that the authorities were unnerved by the tension in the town and by the demonstration into launching the proceedings under section 107 Cr. P.C.

As to the motive for the arrest of the petitioner's seven workers there is again strong circumstantial evidence that it had nothing to do with any plan to paralyse the propaganda machinery of the petitioner or to terrorise his workers or prospective voters. A reference to the report Ex. P.4 made to the Sub-Divisional Magistrate by Ripu Haran Singh for the purpose of securing the ban on meetings and processions as also to the complaint Ex. P.9 on the basis of which proceedings under section 107 Cr. P.C. started will show that the alleged rowdy demonstration against Shri Tikaram Paliwal at the Dak Bungalow and the alleged abuses and threats uttered to him by the demonstrators were greatly weighing on the mind of the police or other authorities and primarily affected the decision to arrest some of the workers of the petitioner. In the very first paragraph of both these reports there is a significant reference to the demonstration while the greater part of Ex. P.1/9 is devoted to the Dak Bungalow incident and to an alleged impending danger of violence to Shri Tikaram Paliwal and congress workers including respondent No. 1 necessitating in the Sub-Inspector's opinion the immediate arrest of the 16 workers of the petitioner who, in Ex. P.1/9 were named in the very second sentence as having been amongst those who took part in the Dak Bungalow demonstration. As shall be shown presently it is in the evidence of some of the respondent's witnesses for **whatever it is worth**,

that the seven workers who were actually arrested were among the demonstrators. In para. of the report Ex. P.1/4 it is stated that the experience of polling conditions in some places where polling had already taken place had shown that minor quarrels between persons of the contending parties had led to serious tension. The reference is perhaps to the Wazirpur episode where, according to the respondent's evidence, there was some violence by some Jan Sangh supporters in connection with a congress procession followed by the promulgation of section 144 Cr. P.C. banning meetings and also, according to the petitioner's evidence, the arrests of a few of his supporters followed by their release on bail, the arrests, however, being denied on behalf of the respondent. In the evidence of Ripuharan Singh there is a reference to this situation at Wazirpur in apparently objective spirit. The contents of these reports seem to show that the police were primarily concerned with the Dak Bungalow incident and who influenced to a considerable extent by the possibility of the incident leading to serious tension and to the absence of a peaceful atmosphere on the polling day.

In the report Ex. R.1/5 made by the Sub-Divisional Magistrate, Shri Narain Das Mehta, on the 20th January, as to the situation at Gangapur on the 19th January, there is a reference in the first paragraph of this to the pouring in of a good number of persons of different parties in Gangapur and to the keen desire of both parties to take out processions and hold meetings, leading to an apprehension of a breach of the peace and the consequent ban on the carrying of weapons in public. On the second page there is a reference to the unreasonable attitude of the parties in trying to take out processions and hold meetings without prior settling of timings and routes and to the fact that in other parts of the country processions and meetings were reported to have been avoided on the eve of the polling days. In the second para. of the report there is reference to the receipt of a police report at 2 P.M. on the 19th January, about the Jan Sangh demonstration at the Dak Bungalow and the alleged abuses and threats to life uttered against Shri Tikaram. There is also a significant reference here to "the life and dignity of the Hon'ble Revenue Minister being a government concern", and to the attitude of the Jan Sangh people in having gone without rhyme and reason to abuse the Hon'ble Minister and threaten his safety. The police are stated to have reported to the S. D. M. about the rising tension and of the possibility of a serious riot on a large scale if meetings and processions were not banned. There is also a reference on the 2nd and 3rd page to the minor skirmishes at Wazirpur as a result of both parties taking out processions and holding meetings on the night of the 15th January. These events were narrated as a justification for the subsequent ban on processions and meetings at Gangapur on the 19th January. Then there is a reference to the Abdul Rahman incident regarding the surrounding of his house and prior to that the receipt of a police report on which warrants of arrest against 16 persons, who allegedly threatened the life of the Hon'ble Minister and respondent 1 and Chatur Bhuji, were issued. At the conclusion of this report it was stated that after the arrests he (S. D. M.) was moved for bail at 11 P.M. and that he told the applicants that the application would be considered the next day. It might be argued that this report was concocted by the Sub-Divisional Magistrate after he had already taken mala fide action against the petitioner's workers but, on the whole it, does not read like an entirely cooked up affair. This is not to say that the arrests were necessarily justified but the report which at the latest should have been written some time on the forenoon of the 20th, does give a sufficient clue to the primary intention of the authorities to safeguard, as they thought, the life, dignity and safety of Shri Tikaram. The report does not seem to betray any attempt to interfere with the election propaganda machinery of any party.

Then there is the evidence of some of the respondent's witnesses specifically naming the arrested persons as amongst those who took part in the Dak Bungalow demonstration R.1/W.2, Gulabchand has specifically named Mishrilal, one of the arrested persons, as having said to the crowd at the Dak Bungalow, "here is a Gunda going", while the witness was passing by the Dak Bungalow at the time of the demonstration and has further stated that on hearing this remark of Mishrilal he ran to the post office. In Cross-examination he further named Damodar Prasad, Ratan Singh and Mishrilal belonging to his town Gangapur as having been recognised amongst the demonstrators at the Dak Bungalow R.1/W Mathuralal has also stated, in cross-examination, that Mishrilal, Chandanal, Gokul Dhakar, Damodarlal and Ram Sahai were amongst the demonstrators at the Dak Bungalow. He also stated that the chief workers of Jan Sangh were some others of whom he could give the names of Kishanlal vakil, Om Prakash Vakil and Har Dayal Prasad, moharrir. In the above evidence, as will be seen, at least five of the arrested persons have been specifically named as amongst those who took part in the demonstrations. A reference to the memo of arrest Ex. P.17 will show that the seven persons arrested on the 19th were Ratansingh, Damodar Prasad, Bhagwati Prasad, Chandanal, Ram Sahai, Gokulchand, and Om Prakash

of Hindaun. R.1/W.6 Abdul Rehman has stated that Om Prakash was one of those who received Shri Bachchu Singh at the Station and from his further statement that those who received Shri Bachchu Singh at the Station directly went to the Dak Bungalow and demonstrated there, it may be assumed that Om Prakash was also supposed to be there. Whether it was Om Prakash, shop-keeper of Hindaun or Om Prakash Vakil of Gangapur, who was meant by Abdul Rahman is not clear. In any case the above evidence shows that the persons actually arrested were believed or at least alleged to have been those who demonstrated at the Dak Bungalow and allegedly abused and threatened Shri Tikaram. There is, therefore, reasons to think that these arrests were primarily motivated, rightly or wrongly, by the Dak Bungalow demonstration.

Then again it is on record that Kishanlal Vakil of Gangapur was the most prominent Jan Sangh worker of Gangapur having been the Jan Sangh president. No Warrant was issued against him and amongst the arrested persons the only workers belonging to Gangapur were Chandanlal, Damodarlal, Bhagwati Prasad, and Ratansingh. All this does not seem to show that the plan was to arrest the prominent workers of the petitioner. On the contrary the plan appears to have been to arrest the supposed mischief mongers only.

I may also deal here with the question as to whether the eighth worker of the petitioner was arrested on the 20th January as alleged by the petitioner in his evidence at page 5. There is some confusion in the evidence of both parties on this point. As already stated by me there is a reference in sub-para. (j) of para. 13, of the petition only to the arrest of seven of the petitioner's workers at Gangapur on the 19th January and no further arrest on that date or on the 20th is referred to. The only witness of the petitioner who has made a specific statement about the eighth worker is P.W.7 Nathilal, who has stated that on the 20th January, one Chiranjilal was arrested by being taken away from his house on the pretext that he was required by the Sub-Inspector and that from the police station he was taken to the Nizamati in hand-cuffs. The only other witness, who has referred to the arrest of this Chiranji Lal is P.W. 19, Om Prakash Arya, who has, however, stated that Chiranjilal was arrested on the evening of 19th January along with six others namely Damodarprasad, Gokal, Ram Sahai, Ratan Singh, Om Prakash, shop-keeper, and Mishrilal. Chiranjilal's name does not find a place in the memo of arrest Ex. P. 17, which contains the names of only the seven persons arrested on the 19th, viz., Ratansingh, Damodar, Bhagwati Prasad, Chandanlal, Ram Sahai, Gokalchand, and Om Prakash. Neither Ripuهران Singh, S.I., nor the Sub-divisional Magistrate, Shri Narain Das Mehta, was put any specific question on behalf of the petitioner in regard to any arrest on the 20th or in regard to the arrest of Chiranjilal or in regard to the hand-cuffing of any arrested person. It will also be seen that with the exception of Nathilal no other witness has made any allegation that Damodarlal or any other worker was hand-cuffed. On the contrary some of them have stated that they were produced in the court without handcuffs, and even the petitioner, in his evidence did not refer to the hand-cuffing of any of his workers. Nothing definite can, therefore, be said as to the alleged arrest of the eighth worker and much less so about the alleged hand-cuffing.

On the question as to whether the prospective voters of the petitioner were actually terrorized as a result of the arrest, there is no positive oral evidence as to the figures of polling. The petitioner, when cross examined on the point, shirked the issue by saying that he did not remember how many votes were actually polled although he did state that the total number of voters at Gangapur was about 9,500. On the basis of form No. 14 however which was called for from the election office the voting for Respondent 1 and the petitioner appears to have been 1747 and 717 respectively at Gangapur. These figures in the home-town of Respdt. I do not seem to indicate that the petitioner's prospective voters were terrorised.

The finding in respect of these issues has to be, therefore, that the two actions comprised in these namely the banning of meetings and processions and the arrest of the petitioner's workers at Gangapur did not amount to corrupt practices or have the effect of invalidating the election.

It has been already pointed out that while Shri Tikaram is alleged in the petition to have been responsible for these two actions there is no allegation that he did so with the connivance or with the knowledge of Respondent 1 or his agent. Even if, therefore, it be assumed merely for the sake of argument that Shri Tikaram inspired all these steps to assist Respondent 1 in the furtherance of his prospects, it is not possible to hold that all this was done with the connivance or with the knowledge of Respondent 1 or of his agent particularly

when there were two other congress candidates in the field. I want to make it clear, however, that on the evidence, it cannot be held that the arrests were made at the instance of Shri Tikaram. The finding under issue No. 17, in respect of issues 6 and 7, has, therefore, to be against the petitioner in any case.

Before parting with this issue, however, it is necessary to record my observations about the conduct of some of the Government officials which has come up before the Tribunal in connection with the decision of some of the issues.

The first case that arises is under issue No. 4. Under this issue it has been held that the Presiding Officer, Shri Ram Swaroop at the Kachroli polling station did not allow the petitioner to enter the polling booth and thus contravened the provisions of R. 17 of the Representation of People (Conduct of election Petition) Rules, 1951. This non-compliance with an election rule although, it has been found not to have materially affected the result of the election, was extremely objectionable particularly in view of the fact that the Presiding Officer appears to have pretended not to have even recognised the petitioner and to have resorted to the humiliating procedure of asking for identification of the petitioner by witnesses. This conduct calls for strong disapproval.

The second case arises under Issue No. 8. It has been held that there was an infringement of the provisions of clause (c) of Section 130 or by the setting up of an office on behalf of the Congress Party within 100 yards of the polling booth No. 588 at Hindaun and there was even a Congress flag at the office. The matter was brought to the notice of Shri Hukam Singh, the Presiding Officer, and yet he took no action on the complaint made on behalf of the petitioner. Although it has been held that this did not affect the result of the election it is undoubtedly a serious matter that such a contravention of the provisions of the election law was allowed openly by the Presiding Officer in spite of the matter having been brought to his notice. Serious notice has to be taken of the conduct of the Presiding Officer, in ignoring the provisions of the law. I may, however, observe that since only the congress office has been found to have been set up within the prohibited area and not that of any particular congress candidate it would not be strictly correct to say that respondent 1 has committed an electoral offence.

The next case comes under Issue No. 14, in which it has been found that Shiv Kumar Sharma, a Government employee, participated in the election propaganda made for the Congress. This conduct of a Government servant also calls for strong disapproval. It cannot be too strongly emphasised that Government servants have to scrupulously avoid taking part in election propaganda on behalf of any party.

Lastly there is the conduct of the authorities at Gangapur, which came up for discussion under issues Nos. 6, 7, and 17. While the finding on this issue has been against the petitioner, I cannot help observing that the arrest of the petitioner's workers in the circumstances in which it was made was extremely likely to create a suspicion in the mind of the petitioner and his supporters that it was intended to frighten his workers and prospective voters and actions such as these have always to be avoided during an election unless there be no alternative. Two of the arrested persons who have come as witnesses have made allegations that they were not provided with food during the night, that they were kept behind bars and not given shelter and that otherwise also the treatment accorded to them was not good. These allegations, if true, are very serious and could easily give rise to a general suspicion that this treatment was resorted to because it was the then Revenue Minister who was alleged to have been insulted, abused, and threatened. Even if it was necessary in the interests of security to arrest the workers immediately, on the evening of the 19th January, there was nothing to prevent the Sub-Divisional Magistrate from starting the proceedings at once and passing an order u/s 117 Cr. P.C., which would have afforded the arrested persons an opportunity immediately to produce sureties and their own bonds, if required. Whatever the merits of the proceedings u/s 107 Cr. P.C. with which the Tribunal is not directly concerned it was hardly desirable to have kept these persons throughout the night in the lock-up or even to have arrested them on the eve of the polling day and quite unnecessarily to create an impression that the chances of the petitioner were being prejudiced. If only the safety of the then Revenue Minister was threatened steps other than the arrest of these persons in the evening and their detention during the night could have been taken. From the evidence on record it seems that the arrested persons were released about 12 P.M., only after the Revenue Minister Shri Tikaram had left and it is also on record that the Sub-divisional Magistrate had the indiscretion to visit the Hon'ble Minister during the proceedings u/s 107. This could easily lead to suspicious howsoever unwarranted, as it seems to have

actually done in the minds of the petitioner and his supporters. I cannot, therefore, help disapproving the conduct of Shri Narain Das Mehta, Sub-Divisional Magistrate in so far as the proceedings u/s 107 are concerned. During his examination as a witness he was hesitant in answering questions in regard to these proceedings and was obviously prevaricating. I, therefore, cannot help regretting that a responsible officer should have taken action on the eve of the polling day which could lead to suspicions in regard to the bonafides of the authorities and their impartiality and to that extent his conduct calls for disapproval.

(Sd.) ANAND NARAIN KAUL,

The 19th December 1953.

(Per HON. SHARMA, CHAIRMAN)

I have had the advantage of reading the judgment of my learned brother Shri Shome, and also the observations of the other learned brother Shri A. N. Kaul. As all three of us are agreed on the findings on all the issues and the order to be made in the case, it is not necessary for me to write anything in detail. All that I wish to add is that on the evidence on the record it is not possible to find that the action of the authorities in the promulgation of section 144 Cr. P.C. at Gangapur or the issue of warrants and arrests of some of the workers of the petitioner was at the instance of Shri Tika Ram Paliwal, the then Revenue Minister, or to help the Congress candidates. So far as the promulgation of section 144 Cr. P.C. is concerned, I agree with Shri A. N. Kaul that there was justification for promulgating it. He has gone into evidence in detail, and his opinion in this respect appeals to me. So far as the arrests are concerned, although I am not prepared to say on the evidence on record that they were made or warrants were issued at the instance of Shri Tika Ram Paliwal or with a view to help the Congress candidates, yet I do not feel that they were perfectly justified. It may be that there was some tension between the parties, but the circumstances do not appear to warrant the arrests of a number of petitioner's workers under section 107 Cr. P.C. at the time of elections. Raising of very objectionable slogans at the time of elections is unfortunately common in this country, and simply because some such slogans were raised, a drastic step like taking proceedings under section 107 Cr. P.C. should not have been taken. Such proceedings should have been taken on such an occasion only if there were the clearest justification for them. Mr. Narain Das Mehta, Sub-Divisional Magistrate, Gangapur, seems to have been too much obsessed with the fact that certain objectionable slogans were raised and some strong language was used in respect of Shri Tika Ram Paliwal by some of the Jan Sangh demonstrators, and that it was not proper for them to use such language in connection with a Minister of the Government, or in connection with a party of which he was a member. It should be noted that even Ministers in the context of elections are like ordinary people, and if they throw themselves into the vortex of an election, they have to put up with some harsh words and objectionable language. I wonder if the Sub-Divisional Magistrate would have taken the step that he took, if such language were used in connection with an ordinary candidate, or in connection with a party which was not a ruling party. However, it cannot be denied that if there is really apprehension of violence or breach of peace, those responsible for maintaining law and order cannot abdicate their functions. Section 127 of the Act, to my mind, only creates a new offence as there was hitherto no offence for such acts as are envisaged in the section, and is not a substitute for the other steps which are necessary under the ordinary law to maintain peace and order.

The Sub-Divisional Magistrate was still more unjustified in keeping the arrested persons in lock up till 12 noon on the day of election. In the first instance, it would have been proper to issue bailable warrants against them, or even if non-bailable warrants were issued, to release them on bail as soon as they were produced before him. The explanation by the Magistrate that no request was made for their release on the 19th January is not convincing. Even so it is not established that this action of the Magistrate materially affected the result of election. It is clear from the record that at least about 60 workers of Jan Sangh were in Gangapur on the 19th and 20th January. Only 7 were arrested and warrants were issued against 16 only. The petitioner was, therefore, left with sufficient number of workers. He polled as many as 715 votes as against 1,747 of the respondent No. 1 at all the polling stations Nos. 649, 650, 651, 652, and 653 at Gangapur, and it does not seem probable he would have polled substantially more even if warrants were not issued against 16 of his workers and 7 of them not arrested. Gangapur appears to have been a very strong citadel of the family of respondent No. 1, and his father and his son had won elections only in the recent past. An important member of Jan Sangh, viz., Jagannath Paliwal had deserted the party on the eve of election and transferred his allegiance to the Congress party. Thus Jan

Sangh party was deprived of whatever influence he could exercise in its favour, and Congress party was enabled to avail of it. To my mind, result of election would not have materially differed even if warrants for 16 Jan Sangh workers were not issued and seven of them not arrested. The action of the Sub-Divisional Magistrate only gave a convenient handle to the petitioner to pose as a martyr. Nor can it be said that corrupt practices extensively prevailed and election was not free and fair on account of this unjustified action of the Magistrate which seems to have been taken out of too much anxiety for the safety and sentiments of the then Revenue Minister, as is evident from the fact that the 7 workers were not bailed out so long as he was at Gangapur and were bailed out soon after he left the place.

Before parting I may say that some of the Government officials in this case did not keep that balance of mind which they ought to have done. Mr. Hukam Singh, the Presiding Officer at Hindaun Polling Station No. 588, ought to have known that setting up of a canvassing office within 100 yards of the polling station was prohibited. It was quite improper on the part of Mr. Hukam Singh to say that because the canvassing office was outside the polling booth, he could not take any steps to remove it. Again, Mr. Ram Swarup, Headmaster Government High School, Hindaun, Presiding Officer at Kachroli Polling Station, ought not to have treated the petitioner in almost a childish manner. The petitioner was entitled under the law to go inside the polling booth as he was the candidate himself, and it cannot be said that Mr. Ramswaroop did not know him, because he was a prominent citizen of Hindaun, and had been before him in this very election at other polling stations. Moreover, his agent could have been asked whether the petitioner was a candidate.

I cannot approve of the action of Shiv Kumar also, who took part in a meeting at Hindaun organised by the Congress party. Howsoever minor his part might be, but under the law he had no business to take any part in the election propaganda. All that he could do was to vote for the candidate of his choice.

I am also not happy about Mr. Narain Das Mehta seeing the Minister so many times in the course of a single day and issuing warrants of arrests of Jan Sangh workers thereafter on the eve of election. This action only served to place the Minister in a compromising position. Government servants ought to maintain an attitude from which it might not be inferred that they were siding with one party or the other in the election. It is a well known principle that justice should not only be done but should also appear to be done. This principle is as salutary in the case of executive officials as in the case of law courts.

(Sd.) KUMAR K. SHARMA, *Chairman.*

By The Tribunal.

The petition is dismissed, but as some of the complaints made by the petitioner in his petition have not been found to be without justification, although they have not been sufficient in the view of the Tribunal to declare the election void or to set aside the election of respondent No. 1, we order the parties to bear their own costs.

(Sd.) KHMAR K. SHARMA, *Chairman.*

(Sd.) A. N. KAUL, *Member.*

(Sd.) P. L. SHOME, *Member.*

The 19th December 1953.

ANNEXURE "A"

ELECTION TRIBUNAL, JAIPUR.

Rikhabdass

v.

Ridhichand & others.

Amendment Application in Election Petition No. 11 of 1952.

Present.

The Hon'ble Mr. Justice K. K. Sharma, *Chairman.*

Shri A. N. Kaul, *Member.*

Shri P. L. Shome, *Member.*

ORDER

Dated 12th January 1953.

In this Election Petition, the petitioner asserts that the election of Respondent No. 1 has not been free and fair and in paragraph 13 of the Election Petition, he has narrated some grounds on which he bases the said assertion. The said grounds have been narrated in sub-para. under para. 13 and numbered as (a) to (t) in the

original Election Petition filed before the Election Commission, but, though numbering the grounds seriatim as stated above, he omits to state or number any ground as No. (s). In the verification of the petition, the petitioner verifies "the contents of the petition of paras. No. 1 to 13, including sub-paras. (a) to (t) as true and correct" from his personal knowledge and belief.

After the petition had been referred to the present Tribunal for trial and the parties had been served and some of them had filed their written statements, the petitioner on the 18th November, 1952, filed a petition praying that his Election Petition might be amended, by the addition of a sub-para. viz., sub-para. (s) to para. 13 of the petition to the following effect—

"(s) That the statement of election expenses submitted by Respondent No. 1 is false."

He further has prayed that his said application for amendment might be treated as a part and parcel of the original Election Petition.

This prayer has been strenuously opposed by the learned advocate for the respondent No. 1 and both parties have been heard at length by the Tribunal.

It seems that the petitioner's case is that sub-para. (s) had been omitted from the original Election Petition through mistake and oversight and he seeks to rectify the mistake by adding the said sub-para. (s) to the original Election Petition by way of amendment thereof. It is his further case that the sub-para. was left out in copying out the main application from the draft. In his application for amendment dated the 18th November, 1952, however, he does not state the circumstances under which the mistake or oversight occurred, who was responsible for the mistake, when the mistake was discovered and why the mistake could not be corrected earlier within time or soon thereafter. The petitioner's said application is neither verified nor supported by any affidavit and curiously enough, the second paragraph thereof contradicts his own case. In paragraph 2 of the said application, the petitioner states—

"2. That this ground was raised by your petitioner in his petition, copy of which is in his possession, *vide* para. 13 sub-para. (s) through an oversight. It reads as follows:—

(s) That the statement of election expenses submitted by Respondent No. 1 is false."

If it is the petitioner's case that this ground was raised by him in his petition through an oversight, how can he now again come forward at this late stage to seek to add this ground to his original petition? This seems to be an anomalous position. Moreover no evidence has been adduced, beyond the mere unverified and unsupported statement in the application that the alleged omission was by a mistake or oversight. There is nothing to show that it was not deliberate, or that it was not an after thought.

It has been brought to the notice of the Tribunal that in the copy of the Election Petition which was published in the Rajasthan Gazette on the 27th September, 52, sub-para. (t) of the original election petition appears as sub-para. (s) and in the copy of the verification printed thereunder, the petitioner verifies the contents of the petition of paras 1 to 13, including sub-para (a) to (s) as true and correct. There is no mention of sub-para. (t) therein. The same has been the case in some of the copies of the Election Petition which have been supplied by the petitioner to the Tribunal for its use as also in the copies which have been supplied by the petitioner to the appearing respondents. The learned Advocate for the petitioner has sought to explain this by stating that the copies supplied to the Tribunal and the respondents might have been prepared from the copy published in the Gazette, but how the sub-para. (s), which is the same as sub-para. (t) of the original petition came to be printed as such in the Gazette has not been shown. The petitioner's explanations about the mistake or oversight may or may not be correct, but there is no evidence in support thereof on which the Tribunal can act. The conduct of the petitioner relating to this matter appears to us to be negligent and devoid of any sense of seriousness or responsibility and we do not see our way to grant the petitioner's prayer at this late stage. The power of amendment is discretionary and we do not think it proper to exercise it in favour of a party who has not been vigilant or diligent.

The ground which is now sought to be added states that the statement of election expenses submitted by the respondent No. 1 is false. A mere allegation that the return of election expenses is false conveys nothing unless it is alleged and shown that it is false in some material particular or particulars and such

falsity is due to some deliberate corrupt motive. The ground taken by the petitioner is extremely vague and does not state in what material particular it is false and how such falsity affects the result of the election. For this reason also apart from other considerations, this ground cannot now be allowed to be added.

Moreover this ground seeks to introduce a fresh case of corrupt practice, which was not originally alleged in the Election Petition, and, therefore, it cannot come in as an amendment at this stage. No sufficient cause has been shown to induce the Tribunal to allow this amendment now when the period prescribed for filing election petition has long expired.

An argument was made by the learned counsel for respondent No. 1 that the Election Tribunal has no power under law to make any amendment which is not covered by clause (3) of Sec. 83 of the Representation of the Peoples Act and as the amendment sought does not come under the said provision it cannot be made. On the view we have taken above, we need not go into this question.

Application for amendment is rejected.

(Sd.) K. K. SHARMA,

(Sd.) P. L. SHOME,

(Sd.) ANAND NARAIN KAUL,

[No. 19/281/52-Elec. III/2210.]

By Order,

P. R. KRISHNAMURTHY, Asstt. Secy.

